No. 10-35824

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

ASARCO, LLC, f/k/a ASARCO Incorporated,

Appellant-Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, HELENA
Case No.: 6:98-00003-CCL

APPELLANT'S EXCERPTS OF RECORD
Volume II

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Attorneys for Defendant-Appellant ASARCO, LLC

TABLE OF CONTENTS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

PROOF OF CLAIM

Name of Debtor: ASARCO, LLC

Case Number: 05-21207

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):
United States of America on behalf of the U.S. Environmental Protection Agency, Dept. of Agriculture, Dept. of the Interior, and the International Boundary and Water Commission

Name and Address where notices should be sent:
David L. Dain
United States Dept. of Justice/ENRD/EES
P.O. BOX 7611-BEN FRANKLIN STATION
Washington, DC 20044-7611
Telephone Number: (202) 514-3644

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☐ Check box if you have never received any notices from the bankruptcy court in this case.
☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated: _____

1. Basis for Claim

☐ Contribution, Indemnity or Guaranty	☐ Goods Purchased	☐ Personal Injury / Wrongful Death	☐ Reclamation Notices	☐ Wages, salaries, and compensation (fill out below)
☒ Environmental	☐ Letters of Credit or Surety Bonds	☐ Officer Indemnity	☐ Refund	Your SS# _____
☐ Equipment Financing	☐ Litigation	☐ Other	☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)	Unpaid compensation for services performed from _____ to _____
☐ Contract	☐ Long Term Disability	☐ Other Financing	☐ Taxes	
☐ Expenses	☐ Mechanic's Liens	☐ Pension Insurance	☐ Trade Payables	☐ Collectively bargained obligations
☐ Goods sold	☐ Money Loaned	☐ Professional Fees	☐ Unknown	☐ Worker's Compensation

2. Date debt was incurred: See Attached

3. If court judgment, date obtained: See Attached

4. Total Amount of Claim at Time Case Filed:

See Attached	See Attached	See Attached	See Attached
(unsecured)	(secured)	(priority)	(Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.
☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.
☒ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:
☐ Real Estate ☐ Motor Vehicle
☒ Other See Attached

Value of Collateral: $ See Attached

Amount of arrearage and other charges at the time case filed included in secured claim, if any: $_____

6. Unsecured Nonpriority Claim
$ See Attached

☒ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

7. Unsecured Priority Claim.
☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $_____
Specify the priority of the claim:
☐ Wages, salaries, or commissions (up to $10,000), * earned within 180 days before the filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier - 11 U.S.C. §507(a)(3).
☐ Contributions to an employee benefit plan - 11 U.S.C. §507(a)(4).
☐ Up to $2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(6).
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
☐ Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(___).

** Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. $10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.*

8. **Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.
9. **Supporting Documents:** Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.
10. **Date-Stamped Copy:** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

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THE TRUMBULL GROUP
MK

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)
07/28/2006	David L. Dain Senior Attorney, U.S. Dept. of Justice/ENRD/EES

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Exhibit E

DAL02:459017.1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
(Corpus Christi Division)

In re	§	**Case No. 05-21207**
	§	
ASARCO, LLC, et al.	§	**Chapter 11**
	§	
Debtors	§	**Jointly Administered**
	§	

SUPPLEMENTAL PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE DEPARTMENT OF AGRICULTURE, THE DEPARTMENT OF THE INTERIOR, AND THE UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER COMMISSION, AGAINST ASARCO, LLC

The United States files this Supplemental Proof of Claim at the request of the U.S. Environmental Protection Agency ("EPA"), the Forest Service of the United States Department of Agriculture ("USDA"), the Bureau of Indian Affairs of the United States Department of the Interior, and the United States Section of the International Boundary and Water Commission against debtor ASARCO, LLC ("ASARCO") for: (1) response costs incurred and to be incurred by the United States under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675 at various sites as set forth herein and (2) for civil penalties as set forth herein. In addition, with respect to equitable remedies that are not within the Bankruptcy Code's definition of "claim," 11 U.S.C. § 101(5), this proof of claim is only filed in protective fashion.

On February 16, 2006 the United States Filed its Initial Proof of Claim (Secured) of the United States on Behalf of the United States Environmental Protection Agency, Department of Agriculture and Department of Interior ("U.S. Initial Proof of Claim"). All allegations contained therein are incorporated herein by reference. The United States is also separately filing: 1)

Exhibit E

Supplemental Proof of Claim of the United States on Behalf of the United States Department of the Interior and the Department of Agriculture, Against ASARCO, LLC, and 2) Proof of Claim of United States of America on Behalf of the Department of the Interior and Certain Indian Landowners.

CERCLA LIABILITIES TO EPA

1. ASARCO is liable to the United States under CERCLA with respect to each of the Sites set forth in paragraphs 2 - 60 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites. Response costs have been and will be incurred by EPA at each of the Sites not inconsistent with the National Contingency Plan ("NCP") promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended. ASARCO is liable to take response action under CERCLA at the Sites set forth below, but this Supplemental Proof of Claim is filed in protective fashion only with respect to such liabilities. See e.g., Paragraphs 3, 16, 18, 27-29, 34-38, 40, 45, 47-48, 54, 56, 59, 61, and 62 infra. ASARCO is also liable to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites. Other potentially responsible parties may, along with ASARCO, also be jointly and severally liable to the United States under CERCLA with respect to some of the Sites.

Bunker Hill Superfund Facility/Coeur d'Alene Basin.

2. This site in northern Idaho was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference.

Exhibit E

Operable Unit Number 1 (the "Box"):

3. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to the 1994 Consent Decree for Operable Unit 1 (the "Box") of the Bunker Hill Site in United States v. ASARCO, Inc., et al., No. 94-206-N-EJL (D. Idaho). See Paragraph 61 infra. On November 17, 1994, the United States District Court for the District of Idaho ordered Debtor and other parties to, inter alia, perform the removal and replacement from residential and commercial properties, street rights of way and public use areas in what is referred to as the "Populated Areas" of OU1 pursuant to the 1994 Consent Decree. Most of the work to be performed under this Decree has been completed.

4. In addition, the Consent Decree requires that ASARCO fund an institutional control program which has and will provide for the repair and maintenance of the selected remedy. EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, $27,540,000 to complete the remaining work and to fund the institutional control program under the Decree.

5. In the U.S. Initial Proof of Claim, the United States alleged ASARCO is also jointly and severally liable to the United States for $13,359,140 for response costs incurred by the United States with respect to the Box through the dates set forth therein. The amount is hereby amended to be $14,724,480, to reflect response costs incurred through July 17, 2006.

6. As a result of its relationship with Government Gulch Inc., ASARCO is an owner of a portion of the property subject to the work requirements of the Consent Decree. This area is generally referred to as Page Ponds. See Paragraphs 203-204 infra.

Operable Unit Number 3:

7. Operable Unit 3 (OU3) is more fully discussed in United States' Initial Proof of

Exhibit E

Claim (Secured) ("U.S. Initial Proof of Claim"). In the U.S. Initial Proof of Claim, the United States limited its claim associated with OU3 of the Bunker Hill Site based on a decision in the United States District Court for the District of Idaho which ruled that the liability at OU3 was divisible and that ASARCO's apportioned share was 22%. Because the United States disagrees with that decision and has the right to appeal that decision, the United States is not making such a limitation on this Supplemental Proof of Claim.

8. As set forth in the U.S. Initial Proof of Claim, EPA has incurred, not inconsistent with the NCP, at least $79,631,480 in response costs for OU3 of the Bunker Hill Site through July 31, 2005, and $23,447,801 in enforcement costs which are CERCLA response costs through August 30, 2005. EPA hereby updates those figures and states that it has incurred at least $104,540,302 in response costs for OU3 of the Bunker Hill Site (not including the enforcement costs identified above) through July 17, 2006. The amount of interest on these response costs due under 42 U.S.C. § 9607(a) through July 17, 2006 is $9,307,771.

9. ASARCO is thus jointly and severally liable to the United States in the amount of $127,988,103 plus interest due under 42 U.S.C. § 9607(a) in the amount of $9,307,771, through July 17, 2006 for OU3.

10. In February of 1998, EPA initiated a Basin remedial investigation and feasibility study (RI/FS). The study area initially included the South Fork and its tributaries, the North Fork, the main stem of the Coeur d'Alene River, Lake Coeur d'Alene and the Spokane River, as well as those areas to which people had moved mining related wastes. For risks posed to ecological receptors, EPA evaluated six comprehensive approaches to address contamination in the Basin. At that time, EPA identified Alternative 3, as its "Preferred Alternative." This Preferred Alterative presents all parties notice of the nature and extent of the remediation that

Exhibit E

may be called for in order to complete the full remediation of the Basin. However, when EPA issued its initial Record of Decision for Operable Unit 3, EPA selected an interim and non-final remedial action which it estimated would cost $362,000,000. The selected interim remedy for OU3 includes the complete remedy for protection of human health in the communities and residential areas, including identified recreational areas, of the Upper Basin (the area east of the Box) and Lower Basin (the area between the Box and Lake Coeur d'Alene. However, with regard to ecological protection, the selected interim remedy includes thirty years of prioritized actions in the Upper and Lower Basin, and the complete remedy for ecological protection in the Spokane River between Upriver Dam and the Washington/Idaho state border. The selected interim remedy also provides a complete remedy for human health upstream of Upriver Dam in the Spokane River. The selected interim remedy does not include remedial action to address contamination in Lake Coeur d'Alene.

11. EPA estimates that additional response action under the Interim ROD for OU3 for which ASARCO is jointly and severally liable will cost $326,000,000. This reflects the total ROD estimate of $362,000,000 minus: (1) $14,000,0000 for remedial work at mining-related properties which neither ASARCO nor Hecla owned nor operated and (2) approximately $22,000,000 already spent by EPA implementing the work identified in the OU3 ROD.

12. In addition, ASARCO recently completed an Engineering Evaluation/Cost Analysis ("EE/CA") for the Gem Portal which is within the area covered by OU3. The EE/CA evaluated the alternatives removal actions to address the acid mine drainage that flows from the Gem Portal to Canyon Creek. Because EPA has not yet selected a removal action to address the contaminated acid mine drainage that drains from the Gem Portal the cost of EPA's future response actions is uncertain. However, EPA estimates that the additional work at the Gem

Exhibit E

Portal will cost $9,946,175. This work is in addition to the work called for in the OU3 ROD. This estimate is based upon the construction and operation of a lime based active treatment system. EPA has incurred approximately $6,907 in response costs overseeing the ASARCO's performance of the EE/CA. The amount of interest on these response costs due under 42 U.S.C. § 9607(a) through July 17, 2006 is $1,450. ASARCO is jointly and severally liable for all these costs.

13. In addition, ASARCO is also jointly and severally liable for additional response action under a Final ROD for OU3. As noted, the RI/FS identified some, but not necessarily all, of the significant additional work that may be required in a final record of decision. However, the cost of such liability is presently undetermined and this claim is therefore filed as a contingent unliquidated claim for such liability.

14. The United States has previously filed in the bankruptcy its Motion for Declaration of the Inapplicability of the Automatic Stay, which seeks a declaration that the United States District Court for the District of Idaho may fix the amount of certain of ASARCO's liabilities for the Bunker Hill Site in in accordance with the police and regulatory exception to the automatic stay. This proof of claim is filed without prejudicing the United States' contention in that motion.

15. As a result of its relationship with Government Gulch Inc., ASARCO is the current owner of portions of the Site subject to OU3, including the Mission Flats portions of the Bunker Hill Site. See Paragraphs 203-204 infra.

16. ASARCO may also be ordered by a court or other authority found to have jurisdiction to perform remedial response action with respect to the Bunker Hill Site. This Supplemental Proof of Claim is filed in a protective manner with respect to any such obligations

Exhibit E

of ASARCO. See Paragraph 61 infra.

California Gulch Superfund Site/Arkansas River Basin.

17. This Site in and around Leadville, Colorado and the Arkansas River was previously identified in the U.S. Initial Proof of Claim. The allegations contained therein are incorporated herein by reference. This Supplemental Proof of Claim includes a protective filing with regard to ASARCO's on-going obligations to comply with clean-up orders at the Site as set forth in paragraph 18 *infra*, and a protective and secured claim related to the implementation of the Lake County Community Health Program as set forth in paragraphs 19 and 20 *infra*. It also updates the claim for reimbursement of past costs included in the U.S. Initial Proof of Claim.

18. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's performance of response actions pursuant to: (1) EPA's Unilateral Administrative Order CERCLA VIII-89-20 (issued on March 29, 1989 and which was amended on April 30, 1993 and on June 15, 1993) for OU1 (Yak Tunnel) of this Site; (2) the 1994 Leadville Consent Decree in Civil Action No. 86-C-1675 (consolidated with Civil Action No. 83-C-2388) in the United States District Court for the District of Colorado, which addresses Operable Units 5, 7, and 9 of this Site; and (3) any order by a court or other authority found to have jurisdiction with respect to Operable Units 11 (Arkansas River flood plain) and 12 (site-wide surface and ground water quality) of this Site. See Paragraph 61, *infra.*

a. The response action addressing the Yak Tunnel and the basis for EPA's Unilateral Administrative Order CERCLA VIII-89-20 are set forth in Paragraph 26 of the U.S. Initial Proof of Claim. EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, approximately $750,000 per year to operate and maintain the water treatment plant and other components of the remedy to manage and treat the discharge from the

Exhibit E

Yak Tunnel. In addition EPA estimates that should the Yak Tunnel collapse or fail that between $20-$30 million would be needed to address possible threats of blow-outs of the tunnel or a change in the hydrology of the area now drained by the Yak Tunnel.

b. As set forth in the U.S. Initial Proof of Claim at Paragraph 27, ASARCO is solely obligated pursuant to the 1994 Leadville Decree to perform the response actions at OUs 5, 7, & 9 of the Site. The response action for OU5 includes the cleanup of historic smelter sites and facilities, with associated hazardous materials consolidated and capped in an onsite repository. The response action for OU7 addresses the seeps and associated metals loading from the Apache Tailings Impoundment to the California Gulch drainage. The OU9 response action addresses the risk of children in residential areas of Leadville being exposed to lead from contaminated soils and other sources and is now being implemented by the so-called Lake County Community Health Program ("LCCHP"). EPA estimates that it will cost ASARCO the following amounts to comply with the 1994 Leadville Decree in order to complete the performance of the response actions for OUs 5, 7, and 9 as follows: (1) as to OU 5 approximately $1 million plus $20,000 per year for O&M costs; (2) as to OU 7 $10,000 - $30,000 per year for O&M costs; and (3) as to OU9 between $600,000 and $3 million.

c. The 1994 Leadville Decree did not resolve, but rather reserved, claims associated with OUs 11 and 12 at the Site. The response action for OU11 will address the area of contamination in the 500-year flood-plain of the Upper Arkansas River at its confluence with the California Gulch drainage and meadows irrigated with California Gulch water which have been impacted by the acid mine drainage and other discharges from the Yak Tunnel and the discharge or erosion of tailings or mine waste containing hazardous substances from within the Site. EPA estimates that it will cost $5.2 million to perform the response action for OU11. The

Exhibit E

response action for OU12 will address site-wide surface and ground water quality, and specifically any remaining contamination at levels of concern following source remediation within the areas of responsibility established by the 1994 Leadville Decree. EPA estimates that it will cost between $12 and $15 million for response actions for OU12. ASARCO is jointly and severally liable for the response actions and response costs associated with OUs 11 and 12.

19. Under the terms of the 1994 Leadville Consent Decree, ASARCO set up a mechanism to fund the implementation of the LCCHP, which provides for remediation and related work such as educational programs, site assessments, blood lead sampling and analysis, and program overhead. ASARCO funded a trust account in the amount of $8.6 million to cover the cost of the LCCHP (the "LCCHP Trust") which was created when ASARCO, EPA, the Colorado Department of Public Health and Environmental ("CDPHE"), Lake County, Colorado, and Wells Fargo Bank West, N.A ("Bank"), entered into the Lake County Community Health Program Trust Agreement, effective August 15, 2001 (the "LCCHP Trust Agreement"). The United States asserts that the LCCHP Trust is not property of the bankruptcy estate, and may be used only in accordance with the purpose for which such funds were set aside. Nevertheless, should it ever be determined that the LCCHP Trust is property of the estate, then the United States asserts that the LCCHP Trust is not available to general creditors, but rather is subject to a constructive or equitable or other form of trust, and the United States asserts a secured claim to and against such proceeds. The United States reserves all rights to take appropriate action to establish the status of such trust interest.

20. The LCCHP Trust Agreement provides for ASARCO to each year submit a written budget for the approval of EPA for the response actions to be completed by ASARCO as part of the LCCHP for the following budget year, which runs from May 1 until April 30. The

Exhibit E

funding is subject to a year-end accounting by ASARCO, subject to EPA's review and approval, of the actual income realized and expenditures incurred during the previous budget year. Prior to its bankruptcy filing, ASARCO proposed a budget for response action activities under the LCCHP, for the period from May 2005 through April 2006, which EPA approved in the amount of $963,639.00. As of the date of ASARCO's bankruptcy filing, approximately $868,000 of this amount was retained by ASARCO in a segregated bank account for the implementation of the EPA-approved LCCHP activities. The United States asserts that these funds are not available to general creditors, but are subject to a constructive or equitable or other form of trust and a secured claim is asserted to such proceeds. The United States reserve all rights to take appropriate action to establish the status of such trust interest.

21. In its Initial Proof of Claim the United States set forth a claim for oversight costs plus interest ASARCO is obligated to pay under the 1994 Leadville Decree with regard to OUs 5, 7, and 9 in the amount of $809,791, and also set forth a claim in the amount of $8,386,980, which does not include interest, for costs incurred by EPA for OUs 1, 11, and 12. EPA has since updated the OUs 1, 11, and 12 cost figures. EPA incurred a total of $1,496,586 for oversight and other response costs associated with OU 1 from February 2, 1991 to December 31, 2005; EPA incurred a total of $5,930,866 for response costs associated with OU 11 from February 2, 1991 to December 31, 2005; and EPA incurred a total of $1,463,321 for response costs associated with OU 12 from February 2, 1991 to December 31, 2005. The updated total for OUs 1, 11, and 12 is $8,890,774. ASARCO is thus jointly and severally liable to the United States in the amount of $9,700,565 (plus interest due under 42 U.S.C. § 9607(a)) for such past response costs.

22. EPA has also continued to incur and will continue to incur response costs at the

Exhibit E

Site, not inconsistent with the NCP and for which ASARCO is jointly and severally liable, for the matters described in Paragraphs 28 and 29 of the U.S. Initial Proof of Claim.

23. ASARCO is the current owner of portions of this Site individually and/or as a joint venture partner of the Res-ASARCO Joint Venture. See Paragraphs 203 - 204 infra.

Commencement Bay Nearshore Tideflats Superfund Site

24. The Commencement Bay Nearshore Tideflats Superfund Site in and around Tacoma and Ruston, Washington, consists of at least seven operable units. Four of those operable units relate to the former ASARCO smelter facility located along the Commencement Bay shoreline in Tacoma and Ruston, Washington. Of these four operable units, the three that still require remedial work are: (1) Operable Unit 02: the ASARCO Tacoma Smelter property and the adjacent Slag Peninsula (ASARCO Smelter Site); (2) Operable Unit 06: the ASARCO Offshore Sediments and Yacht Basin (the Sediments Site); and (3) Operable Unit 04: the Ruston North Tacoma Study Area (Ruston Yards).

25. ASARCO is liable to the United States under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), with respect to the Site because (a) it is the owner of a portion of the Site, and (b) was the owner of a portion of the Site at the time of disposal of hazardous substances.

26. EPA estimates that it has incurred unreimbursed costs, not inconsistent with the NCP, at this Site through December 2005 of at least $1,700,000 for which ASARCO is jointly and severally liable.

27. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action for OU2 pursuant to a Consent Decree entered by the United States District Court for the Western District of Washington on January 3, 1997 in United States v ASARCO, Inc., Civil Action No. 91-5528 B ("1997 Tacoma Decree"). See

Exhibit E

Paragraph 61 infra. Substantial work has been performed pursuant to this Consent Decree. EPA estimates that it will cost ASARCO $25,000,000 to perform the remaining response action work. The work required under the Consent Decree includes, inter alia., excavation of source area soils and slag and demolition debris designated as hazardous substances in an on-site containment facility, capping of the Site and other protective measures.

28. This Supplemental Proof of Claim is also filed in a protective manner with respect to ASARCO's obligation to perform response action for OU4 pursuant to a Consent Decree entered by the United States District Court for the Western District of Washington in May 1995 in United States v ASARCO, No 94-5714 RJB. See Paragraph 61 infra. On May 2, 1995, the United States District Court for the Western District of Washington ordered Debtor to perform the clean-up of the residential yards and public spaces near or adjacent to the Tacoma Smelter Site pursuant to the Consent Decree. Substantial work has been performed pursuant to this Consent Decree. The selected remedy for OU4 involves removal of contaminated soils from residential yards and public spaces in Ruston and Tacoma. Assuming that ASARCO performs all the work called for in the 2006 Annual Budget of the ASARCO Environmental Trust, EPA estimates that it will cost ASARCO between $4,000,000 and $8,000,000 to perform the remaining response action work for this OU.

29. This Supplemental Proof of Claim is also filed in a protective manner with respect to ASARCO's obligation to perform response action for OU6 pursuant to a unilateral administrative order issued to ASARCO in 2002 (In the Matter of Commencement Bay Nearshore/Tideflats Superfund Site ASARCO Sediments/Groundwater, ASARCO Inc. Respondent, EPA Docket No. 10-2002-0046) to perform the clean-up called for in the Record of Decision. See Paragraph 61 infra. The selected remedy for OU6 includes, inter alia., capping

Exhibit E

the offshore sediments, dredging portions of the Yacht Basin and north shore area, and long term monitoring and institutional controls for groundwater. ASARCO has performed some of the work required but has not started remedial action on the sediments. EPA estimates that it will cost ASARCO $20,000,000 to perform the remaining response action work for this OU.

30. The United States, ASARCO and a third party, Point Ruston, LLC, have recently entered into a Second Amendment to the 1997 Tacoma Decree. These parties have also entered into a Lien Resolution Agreement. These matters are pending before the respective courts. Should the agreements be entered ASARCO's responsibilities at OU2 and OU6 will be reduced should Point Ruston perform as required under these agreements.

31. ASARCO is the current owner of portions of this Site. See Paragraphs 203 - 204 infra.

32. The United States has a lien with respect to this Site. See Paragraph 205 infra.

East Helena Superfund Site

33. This site in Lewis & Clark County, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of $1,562,494 for response costs incurred through November 30, 2005, plus interest through January 12, 2006. EPA now estimates that it has incurred response costs of at least $1,712,317 at the Site, not inconsistent with the NCP, through May 31, 2006 (plus interest through May 31, 2006 due under 42 U.S.C. § 9607(a) of $93,455.) ASARCO is thus jointly and severally liable to the United States in the amount of $1,802,494.

34. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to (1) the RCRA Consent Decree in

Exhibit E

United States v. ASARCO, No. 98-3-H-CCL (D. MT); (2) AOC 89-10 (as discussed in the U.S. Initial Proof of Claim) (3) AOC 91-17 (as discussed in U.S. Initial Proof of Claim), and (4) CERCLA Consent Decree United States v. ASARCO, Inc., No. 90-46-H-CCL (D. MT). See Paragraphs 61 - 62 infra.

35. On December 27, 1990, the United States District Court for the District of Montana ordered Debtor to, inter alia, implement EPA's 1989 Record of Decision pursuant to a Consent Decree in United States v ASARCO (D. MT) CV 90-46-H-CCL. This decision addressed Process Fluids Operable Unit (OU1), including subunits for Thornock Lake, Lower Lake, an acid plant waste treatment facility, and a speiss granulating pit and pond, all of which are on the smelter site itself. Work on all of the subunits has been completed except for remediation of Lower Lake, and activity at that location is currently governed by the RCRA consent decree.

36. Pursuant to AOC 89-10, EPA ordered Debtor to inter alia, perform site investigations and a feasibility study. Debtor has not completed this work.

37. Pursuant to AOC 91-17, EPA ordered Debtor inter alia, to clean up certain residences and yards. Debtor has not completed this work.

38. On May 5, 1998, the United States District Court for the District of Montana ordered Debtor to, inter alia, conduct investigations and appropriate clean up activities (together commonly known as a RCRA "corrective action") on property owned by Debtor, and where Debtor operated it's lead smelting and other operations. Debtor is required to adequately identify the nature and extent of all hazardous constituents in the soil and groundwater (primarily metals such as arsenic and lead), and the directions the contamination is moving. Debtor is then required to study legitimate alternatives for both short and long term clean up activities and to

Exhibit E

implement both short and long term clean up activities after EPA approval. At present, and with EPA approval, Debtor is developing and will implement a remedy for a very large source of arsenic in groundwater, commonly known as the speiss area. Debtor also plans develop a relatively new type of "barrier wall" system to halt the migration of what is presently understood to be a very large component of the contaminated groundwater, into the community. In addition, after completing of as-yet undetermined corrective action activities at a portion of the facility, Debtor is obligated to conduct a specific project (referred to as the supplemental environmental project) to restore the quality of habitat at that portion of the facility.

39. ASARCO is also obligated to fund the Lead Education and Abatement Program pursuant to AOC 91-17. EPA estimates the cost of that program for which ASARCO is jointly and severally liable to the United States to be $150,000 per year for each of the next ten years.

40. ASARCO is also jointly and severally liable under CERCLA for the following: (1) EPA estimates that, following completion of the work scheduled to be conducted in 2006 pursuant to the 2006 Annual Budget of the ASARCO Environmental Trust, there will be 110 yards that qualify for clean-up under the current cleanup protocols. The cost of such cleanups is estimated to be $4,300,000; (2) EPA and the State of Montana are presently trying to determine whether cleanup levels should be set at a more stringent level. If that occurs the costs could increase significantly however, a decision regarding such properties has not yet been made and the cost of such cleanup is presently undetermined and this claim is therefore filed as a contingent unliquidated claim for such liability; and (3) There are several hundred additional acres that do not contain residential properties that are contaminated and may require cleanup in order to be developed. A decision regarding such properties has not yet been made and the cost of such cleanup is presently undetermined. This claim is therefore filed as a contingent

Exhibit E

unliquidated claim for such liability.

41. The above cost estimates assume that ASARCO shall perform the required response actions. If EPA is required to perform such response actions it will incur costs - including its indirect costs - significantly in excess of those estimated above.

42. ASARCO is the current owner of portions of this Site. See Paragraphs 203 - 204 infra.

43. The United States has a lien with respect to this Site. See Paragraph 205 infra.

El Paso County Metal Survey Site

44. This site in El Paso County, Texas was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of $17,701,074 for costs plus interest incurred through October 31, 2005.

45. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to Administrative Order: In the Matter of El Paso County Metals Survey Site - ASARCO Inc. Respondent, Docket No. 6-8-05. In that administrative order EPA ordered Debtor to inter alia, to perform work associated with residential yard cleanups. EPA estimates that it will cost Debtor $8,700,000 to perform the remaining yard cleanups.

Encycle Site

46. ASARCO is liable to the United States under the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6901 *et seq.*, and under an administrative order on consent and a consent decree with respect to the facility located at 5500 Up River Road, Corpus Christi, Texas.

47. This Proof of Claim is filed in a protective manner with respect to ASARCO's obligations to perform closure of certain solid waste units at the facility at the conclusion of operations, and to perform specific corrective action at the facility. See Paragraph 61 and 62 infra. In October 1999, the United States District Court for the Southern District of Texas entered a Consent Decree and ordered Debtor, inter alia, to operate its facility in accordance with RCRA, to take corrective action measures at the facility, to implement a plan for closure of the RCRA facilities at the plant, and to perform two supplemental environmental projects ("Projects"). On August 13, 2004, the United States District Court for the Southern District of Texas entered a Stipulation and Order Modifying Consent Decree ("Stipulation"), and ordered ASARCO and another party to comply with fixed deadlines for RCRA closure and corrective action at the Encycle facility. As part of the Stipulation, ASARCO committed to completing closure in accordance with the closure plan by.

48. For protective purpose, the United States also alleges that to the extent that the Consent Decree or Stipulation does not require all cleanup required by RCRA or CERCLA at the Encycle Site, ASARCO is liable for the performance of all such work as the former owner/operator, or as a person who arranged for the disposal of hazardous substances at the Site, and/or due to its relationship with its subsidiaries.

Omaha Lead Smelter Superfund Site

49. This site in Omaha, Nebraska was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In the Initial Proof of Claim the United States asserted a claim for unreimbursed past costs as of December 10, 2005 of, at least $47,521,298.17 (excluding interest).

50. EPA has, through June 27, 2006, incurred unreimbursed response costs, not

Exhibit E

inconsistent with the NCP, of, at least, $59,044,026. EPA also estimates its interest on all costs incurred, through June 27, 2006, to be $2,357,695.

51. ASARCO is jointly and severally liable to the United States in the amount of $61,401,721 (plus additional interest due under 42 U.S.C. § 9607(a)) for such past response costs and interest.

52. EPA shall also continue to incur substantial costs at this Site implementing the interim ROD. EPA estimates that it will incur $45,000,000 in costs in completing the Interim Remedy.

53. Moreover, EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, $5,000,000 to perform the remedial investigations and feasibility study necessary to select a final Record of Decision at the Site.

54. EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, $50,000,000 - $150,000,000 to implement a final Record of Decision at the Site.

55. ASARCO is jointly and severally liable to the United States for this Site in the total amount of between $161,410,711- $261,410,711 (plus additional interest due under 42 U.S.C. § 9607(a)).

56. ASARCO may also be ordered by a court or other authority found to have jurisdiction to perform remedial response action with respect to this Site. This Supplemental Proof of Claim is filed in a protective manner with respect to any such obligations of ASARCO. See Paragraph 61 infra.

Murray Smelter Site

57. The Murray Smelter Site in Murray, Utah, comprises two areas, the former operational areas of the Murray Smelter and adjacent Germania Smelter (the "on-facility"

Exhibit E

portion of the site) and surrounding residential and commercial areas impacted by smelter stack emissions (the "off-facility" portion of the site).

58. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), because ASARCO and its corporate predecessors are former owner/operators of the Site at the time of disposal of hazardous substances.

59. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to a 1998 Consent Decree in United States v. ASARCO, Inc., et al., No. 2:98CV0415B (D. Utah). See Paragraph 61 infra. In this Decree, the United States District Court for the District of Utah ordered Debtor and other parties, inter alia, to perform the remediation at the Site, pay certain costs, implement institutional controls and perform the long term operations and maintenance work pursuant to the Consent Decree. ASARCO has completed the remedial construction and is currently required to submit quarterly monitoring and annual reporting that includes specific statistical analyses of ground water monitoring data until performance standards are achieved. EPA estimates that it will cost ASARCO $50,000 per year for ground water monitoring and $75,000 per year for institutional controls to perform the remaining response action. If the standards are not achieved, ASARCO must also implement the contingency aspects of the Record of Decision issued for this Site. EPA estimates that it will incur oversight costs of $15,000 per year as long as groundwater monitoring is in progress. The Consent Decree also requires ASARCO to perform a contingency remedy if levels of arsenic in ground water do not sufficiently decrease over time. However, the cost of this contingent liability is presently undetermined and this claim is therefore filed as a contingent unliquidated claim for such liability.

60. As of January 2006, ASARCO is liable to EPA for past costs in the amount of

Exhibit E

$46,998.64 plus interest for unreimbursed response costs, not inconsistent with the NCP, in accordance with the terms of the 1998 Consent Decree.

PROTECTIVE FILING FOR INJUNCTIVE/WORK OBLIGATIONS

61. The United States is not required to file a proof of claim with respect to ASARCO's injunctive obligations to comply with work requirements arising under orders of courts, administrative orders, and other environmental regulatory requirements imposed by law that are not claims under 11 U.S.C. § 101(5). See, e.g., Paragraphs 3, 16, 18, 27-27, 34-38, 40, 45, 47-48, 54, 56, 59 supra and paragraphs 62, 68, 72-79, 179-181, 190-193 infra. See also, e.g., United States v. Atlantic Richfield, et al., CV 02-35-Bu-RFC, (D. Mont.) entered August 2002 and United States and Texas v. Encycle/Texas and ASARCO, No H-99-1136 (D. Tex.). ASARCO and any reorganized debtor(s) must comply with such mandatory injunctive and regulatory and compliance requirements. The United States reserves the right to take future actions to enforce any such obligations of ASARCO. While the United States believes that its position will be upheld by the Court, the United States has filed this proof of claim only in protective fashion with respect to such obligations and requirements as indicated herein to protect against the possibility that ASARCO will contend that it does not need to comply with any such obligations and requirements and the Court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements but only in the event that the Court finds that such obligations and requirements are dischargeable claims under 11 U.S.C. § 101(5) rather than obligations and requirements that ASARCO, as a debtor-in-possession and as reorganized, must comply with. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies with respect to such rights and obligations.

Exhibit E

62. RCRA Compliance and Work Obligations. This Proof of Claim is filed in a protective manner with respect to ASARCO's compliance and work obligations under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. RCRA establishes a comprehensive regulatory program for generators of hazardous waste and for owners and operators of facilities that treat, store, or dispose of hazardous waste. ASARCO is the owner and operator of RCRA-regulated facilities in: Hayden, AZ; Mission, AZ; Ray, AZ; Globe, CO; East Helena, MT; El Paso, TX; Amarillo, TX; Houston, TX; and Tacoma WA, and other locations. Pursuant to its authority under RCRA, EPA has promulgated regulations applicable to such generators and such owners and operators of hazardous waste management facilities. The federal RCRA implementing regulations are set forth at 40 C.F.R. Part 260 et seq. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA has authorized various States to administer various aspects of the hazardous waste management program in such States. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), these authorized State hazardous waste management program are enforceable by EPA. Under RCRA, ASARCO is required, inter alia, to operate in compliance with RCRA regulatory requirements, implement closure and post-closure work and corrective action work, and perform any necessary action with respect to any imminent and substantial endangerment to health or the environment, see, e.g., 42 U.S.C. §§ 6924, 6928, 6973, as required by RCRA and/or RCRA permits, Consent Decrees or Administrative Orders. EPA and ASARCO have entered into RCRA Consent Decrees with regard to the Encycle, El Paso and East Helena Facilities. ASARCO is liable for injunctive and compliance obligations that it is required to perform under RCRA, RCRA permits, and all work requirements under RCRA permits, consent decrees and administrative orders. It is the position of the United States that a proof of claim is not required to be filed for injunctive, compliance,

Exhibit E

and regulatory obligations and requirements under RCRA. See Paragraph 61 supra.

ADDITIONAL CERCLA CLAIMS BY EPA FOR RESPONSE COSTS

63. ASARCO is liable under CERCLA to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites set forth in paragraphs 64 to 149 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites. Response costs have been and will be incurred by EPA at each of the Sites not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended. Other potentially responsible parties may along with ASARCO also be jointly and severally liable to the United States under CERCLA with respect to some of the Sites.

Big River Mine Tailings and Federal Mine Tailings Sites

64. The Federal Mine Tailings Site is one of the mine waste sites within the St. Francois County Mining Area. The Federal Mine Tailings Site is located in and around St. Joe State Park, near the City of Park Hills in St. Francois County, Missouri.

65. The Big River Mine Tailings Site is a separate Site in St. Francois County and was added to the National Priorities List ("NPL") on October 14, 1992.

66. ASARCO's corporate predecessor, Federal Lead Co., previously owned and operated lead mining and milling operations at the Federal Mine Tailings Site. During this time period, the Federal Lead Co. disposed of mining and milling wastes including hazardous substances at the Federal Mine Tailings Site by pumping mine and mill tailings across the site. Migration of mine waste including hazardous substances from the Federal Mine Tailings Site has

Exhibit E

occurred via wind erosion, storm water runoff, and mechanical means such as hauling or track-out. Mine waste including hazardous substances from the Federal Mine Tailings Site has migrated to residential yards, surface waters and sediments, which are being addressed as part of the Big River area-wide remedial and removal activities.

67. ASARCO is jointly and severally liable at these Sites under Section 107(a) of CERCLA, 42 U.S.C. 9607(a) because ASARCO is a former owner/operator of the Federal Mine Tailings facility at the time of disposal of hazardous substances, and/or is a person who arranged for disposal of a hazardous substance at the Site.

68. ASARCO, The Doe Run Resources Corporation, and the State of Missouri are parties to an Administrative Order on Consent ("AOC"), Docket No. VII-97-F-0009, with EPA to conduct an Engineering Evaluation/Cost Analysis ("EE/CA") for the Federal Site. In addition, ASARCO and Doe Run are parties to an AOC, Docket No. VII-97-F-0002, with EPA that requires them to conduct a Remedial Investigation and Feasibility Study ("RI/FS") addressing impacts from all of the piles in St. Francois County to soil, surface water and sediment. See Paragraph 61 supra. In addition, Doe Run is a party to an AOC, Docket No. CERCLA-7-2004-0167, requiring Doe Run to address residential yards with elevated lead levels around piles in St Francois County.

69. EPA has incurred unreimbursed response costs, not inconsistent with the NCP, through June 10, 2006 at the Federal Mine Tailings Site of approximately $238,321.

70. EPA estimates that it will in the future incur response costs at the Federal Mine Tailings Site related to the covering the exposed tailings and stabilizing the tailings that have washed past the tailings dam in the amount of $8,000,000.

71. EPA has incurred unreimbursed response costs, related to the area-wide remedial

Exhibit E

and removal activities, not inconsistent with the NCP, through June 10, 2006 at the Big River Mine Tailings Site of approximately $936,750.

72. EPA estimates that it will in the future incur response costs at the Big River Mine Tailings Mine Site related to the remediation of residential yards, surface waters and sediments in the amount of $10,000,000 - $20,000,000.

73. ASARCO is jointly and severally liable to the United States for these Sites in the above stated amounts (plus interest due under 42 U.S.C. § 9607(a)). These amounts do not include the AOCs referred to above, with which ASARCO is also required to comply.

Cherokee County Superfund Site

74. This site located in Kansas was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of $27,373 for response costs incurred through January 18, 2006.

75. In addition to the response costs identified in the U.S. Initial Proof of Claim, as to the Baxter Springs (OU3) and the Treece (OU4) subsites for response actions to surficial wastes at the Baxter Springs and Treece subsites and impacted sediments within Tar Creek, EPA estimates that it has incurred or will incur additional and future response costs, not inconsistent with the NCP, in the amount of $8,000,000.

76. In addition to the response costs identified in the U.S. Initial Proof of Claim, as to the Spring River (OU2) subsite for stream and tributary and other dredging at points at and below ASARCO's initial connection with affected waters, EPA estimates that it has incurred or will incur substantial additional and future response costs, not inconsistent with the NCP, at the Site. Numerous investigations and related estimates related to the costs of cleanup stream,

Exhibit E

tributary and lake dredging are ongoing and have been provided and will be to ASARCO. Those costs are generally applicable to the potential costs at this subsite. However, the cost of this liability is presently undetermined and this claim is therefor filed as a contingent unliquidated claim for such liability.

77. ASARCO is jointly and severally liable to the United States for this Site (plus interest due under 42 U.S.C. § 9607(a)).

Circle Smelting Site

78. Circle Smelting is a former zinc smelter owned and operated by ASARCO between 1904 and 1994 which produced, inter alia, large quantities of zinc slag containing lead and other metals that were spread over the smelter facility and other areas of the Village of Beckemeyer, Illinois. In 1997, ASARCO signed an administrative order on consent to excavate residential and municipal contaminated soils to a soil repository located on the smelter site. In 2001, a prospective purchaser agreement was signed and a part of the Smelter site is now being reused. ASARCO remains the owner of part of the smelter property, including the contaminated soil repository.

79. In 2002, ASARCO defaulted under the administrative order and work at the Site stopped. EPA took over work at the Site between 2002 and 2005. Some of EPA's work during this period was funded by monies provided from the ASARCO Environmental Trust. ASARCO signed a modification to the original administrative order in 2005 wherein it agreed to perform the removal work using funds from the consent decree's trust fund. All removal work is on schedule to be completed by the close of 2006.

80. ASARCO is jointly and severally liable to the United States under CERCLA with respect to the Circle Smelting Site because (a) it is the owner of a portion of the Site, and (b) it

was the owner of a portion of the Site at the time of disposal of hazardous substances and (c) it has obligations under the AOC. See Paragraph 61 supra.

81. EPA has incurred $8,008,637.50 in unreimbursed response costs (including interest) not inconsistent with the NCP between February 1, 2003 and June 30, 2006.

82. ASARCO is jointly and severally liable to the United States for this Site in the amount of $8,008,637.50 (plus interest due under 42 U.S.C. § 9607(a)).

83. Removal work is currently being conducted by ASARCO using monies from the ASARCO Environmental Trust. This work is scheduled to be completed in 2006. If the work is not completed in 2006, additional funds will be necessary to finish uncompleted work. Finally, continuing operation and maintenance of the soil repository on the former smelter property presently owned by ASARCO will be necessary. Assuming ASARCO completes the work removal work in 2006, EPA estimates that ASARCO will in the future incur response costs at the Site for operations an maintenance as to the property it owns in the amount of $5,000 per year.

84. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

Federated Metals Site (Houston)

85. The site is located in Houston, Texas. The site is bound on the north by the Union Pacific Railroad, on the west by Interstate 610 and on the south by a diked area formerly used for the disposal of ship channel dredgings. The former Federated Metals plant received wastes from the production of nonferrous alloys. The primary waste generated was magnesium slag. During plant operations, the magnesium dross was placed in waste piles throughout the facility after going through the metal recovery process. Other wastes on-site include spend

Exhibit E

graphite anodes, refractory bricks, asbestos material, rusted empty drums, and rubber rings. The site was also used as a disposal site for dross that contains the naturally occurring radioactive isotopes thorium 228, 230 and 232. The thorium affected dross was apparently generated as a waste material in the production of magnesium anodes for cathodic protection systems.

86. The State of Texas has indicated that it intends to pursue remediation at this Site. ASARCO has entered into agreements with the State of Texas to perform work associated with the contamination at this Site. (In the Matter of the Site Known as Federated Metals State Superfund Site: agreements dated 6/30/93 and 12/1/99.) Either directly or due to its relationship with Federated Metals, ASARCO is a former owner/operator of the Site.

87. This Supplemental Proof of Claim is filed in a protective manner with respect to any such obligations of ASARCO should the State refer the site to the EPA and Debtor or any subsidiary debtor does not perform the clean up of the site. EPA refers to the proofs of claim filed by Texas.

88. Due to its relationship with Federated Metals, Inc., ASARCO is the current owner of the Site. See paragraphs 203-204 infra.

89. Although ASARCO is liable for future work at this Site, the cost of such liability is presently undetermined and this claim is therefor filed as a contingent unliquidated claim for such liability.

Globe Site

90. This site in Denver, Colorado was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of $29,607 for response costs incurred between February 1, 2003 and December 31, 2005. The United States hereby updates

Exhibit E

the past costs incurred to be $66,283.

91. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

92. The United States has a lien with respect to this Site. See Paragraph 205 infra.

93. In addition to the response costs identified in the U.S. Initial Proof of Claim, EPA estimates that additional and future work at the Site at portions of the Site not owned by ASARCO will be $4,000,000. The work required on the portions of the Site not owned by ASARCO is that work required to complete the remedy in OU3 which includes sampling and if necessary further remediation of commercial and industrial properties.

94. The United States estimates that additional and future work at portions of the Site owned by ASARCO will be $10,000,000. That portion of the work is the work set forth for OUs 1, 2 and 4.

95. ASARCO is liable to the United States for this Site in the total amount of $14,066,283 (plus interest due under 42 U.S.C. § 9607(a)).

Hayden Facility.

96. ASARCO is the owner and operator of the Hayden Site in Arizona. The operations at Hayden include a crusher, a concentrator, an overhead conveyor, an active smelter, an inactive smelter, property with tailings piles, and other nearby properties in Hayden and Winkelman, Arizona. Hayden is located near the intersection of Highway 177 and Route 77, approximately 100 miles southeast of Phoenix and 52 miles northeast of Tucson.

97. ASARCO is liable to the United States under CERCLA with respect to the Hayden Site because (a) it is the owner/operator of a portion of the Site and (b) was the owner/operator of a portion of the Site at the time of disposal of hazardous substances.

Exhibit E

98. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

99. EPA has incurred response costs, not inconsistent with the NCP, through June 1, 2006 at this Site of at least $2,554,058.

100. EPA has received reimbursement for some but not all of those costs from the ASARCO Environmental Trust. The exact accounting of how much of the costs incurred by EPA through June 1, 2006, shall be reduced by payments from the ASARCO Environmental Trust is not complete. As a result, ASARCO is liable to the United States under CERCLA for $2,554,058 minus any proceeds from the ASARCO Environmental Trust that are properly applied to such costs. EPA believes that the past cost claim shall be reduced by at least $1,000,000 as a result of payments from the ASARCO Environmental Trust.

101. As to further costs, the contract costs of remedial investigation over a three year period are estimated at approximately $1.468 million. Subtracting amounts already spent and funds provided to the Hayden Special Account for expenditure on the remedial investigation in 2006, EPA anticipates that it will incur, at least, $400,000 for the remedial investigation in 2007.

102. EPA has not yet determined what cleanup levels are appropriate, the number of yards which will need to be addressed, or the costs of each cleanup. Recognizing all these uncertainties, the range of costs for cleanup of residential yards could be as low as $150,000 or as high as $1,500,000.

103. ASARCO is jointly and severally liable to the United States under CERCLA with respect to the Hayden Site because it is the owner/operator of a portion of the Site, in the total amount of, at least, $2,104,000 - $3,454,000 which does not include its potential future liability for cleanup on the non-residential property it owns.

Exhibit E

Jack Waite Mine Site

104. This site near Prichard, Idaho was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of $116,539 for response costs incurred through December 21, 2005.

105. EPA also incorporates paragraphs 175-178 below and joins in the estimate of future costs presented by USDA.

Jasper County Superfund Site

106. ASARCO is liable to the United States under CERCLA with respect to the Jasper County Superfund Site which is located in southwestern Missouri and is about 270 square miles in size.

107. The Site is divided into five separate operable units (OUs) for clean up including OU-1, Mining and Milling Wastes; OU-2, Smelter Waste Residential Yards; OU-3, Mine Waste Residential Yards; OU-4, Ground Water, and OU-5, Spring River Watershed. EPA has issued Record of Decisions (RODs) for OUs 1, 2, 3 and 4. ASARCO has resolved its CERCLA liability for OU 4 with the United States in an earlier Consent Decree.

108. EPA has incurred past unreimbursed response costs, not inconsistent with the NCP, through December 31, 2005, for OU1 of approximately $2,669,114.78.

109. ASARCO owned or operated properties where mining wastes must be cleaned up under OU-1. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2) for OUs 1 and 5 because ASARCO is a former owner/operator of mines and mills at the time of disposal of hazardous substances at the Site.

110. OU-1 includes surface water and sediments cleanups in certain tributaries and

surface mining waste cleanups. EPA estimates that it may cost EPA or the jointly and severally liable parties approximately $60 million to perform the required work at OU1. However, EPA does not claim that ASARCO is jointly and severally liable for all costs of cleanup associated with the OU-1 cleanups. Based on EPA estimates, ASARCO's total response costs liability for OU1 future costs is, at least $18,490,000.

111. OU-5 includes surface water and sediment cleanups in the Spring River Watershed. EPA estimates that approximately 120,000 linear feet of this stream cleanup is downstream from ASARCO's former properties. Based on EPA estimates, ASARCO's total response costs liability for OU-5 future costs associated with that 120,000 linear feet is, at least $9,600,000.

112. EPA also estimates that there will be additional costs associated with the cleanups at Ous 1 and 5 and estimate those costs to be $4,494,400.

113. Thus, ASARCO's liability for OUs 1 and 5 for this Site is the total amount of $32,584,400 (plus interest due under 42 U.S.C. § 9607(a)).

Madison County Site

114. The Madison County Mines Site is located in Madison County, Missouri. The City of Fredericktown is centrally located in the county, approximately 85 miles south of St. Louis. There are approximately 1,700 single family homes in Fredericktown. Historic mining areas surround the city.

115. The Madison County Site includes a number of tailings and chat piles, one of which is known as the Catherine Mine subsite. Waste has migrated from the piles via wind erosion, water erosion, and mechanical movement within Madison County and the City of Fredericktown. The hauling of chat and tailings occurred and mine waste was used in the yards,

Exhibit E

driveways, and on the city's streets. These practices have resulted in residential properties with levels of lead exceeding EPA's time-critical removal level of 1,200 ppm.

116. The Catherine Mine subsite is currently owned by Delta Asphalt Co. but was previously owned and operated by ASARCO or its corporate predecessors. ASARCO is jointly and severally liable at this Site under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site and/or is a person who arranged for disposal of a hazardous substance at the Site.

117. Currently, EPA has fund lead activities ongoing, which include time-critical removal actions to address contaminated residential yards within and around Fredericktown, and remedial investigation activities to determine the nature and extent of soil, surface water, sediment and groundwater contamination. The Catherine Mine subsite includes EPA's soil repository, which contains lead contaminated soils excavated from residential yards pursuant to EPA's removal activities. The Madison County Mines Site was added to the NPL on September 29, 2003.

118. EPA has incurred response costs not consistent with the NCP through June 10, 2006 of $22,821,096.

119. EPA estimates that it will in the future incur additional response costs at the Madison County Site related to further investigations, remediation of residential yards, surface waters, and sediments, stabilization of piles, and repository construction costs, not inconsistent with the NCP, at the Madison County Site in the amount of $35,946,986.

120. ASARCO is jointly and severally liable to the United States for this Site for the above referenced costs (plus interest due under 42 U.S.C. § 9607(a)).

Newton County Superfund Site

121. The Newton County Mine Tailings Site is located in Newton County, Missouri and is a portion of the Tri-State Mining District located in Kansas, Missouri and Oklahoma, which was once the largest lead and zinc mining area in the world. The Site is listed on the National Priorities List ("NPL"). This Site is located directly south of the Jasper County Superfund Site. The site currently consists of six former mining subdistricts, Granby, Spring City-Spurgeon, Diamond, Wentworth, Stark City and the Jasper County Overlap..

122. ASARCO is the corporate successor to the Federal Mining & Smelting Company ("Federal") by a 1953 merger. Federal owned and mined, or leased for mining, extensive tracts of land within the Granby and Spring City/Spurgeon Subdistricts. Federal operated within these subdistricts intermittently between 1926 and 1944. During Federal's ownership or operation hazardous substances were released to the ground water and soils within the Granby and Spring City/Spurgeon Subdistricts.

123. ASARCO is liable at these two subdistricts under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site.

124. EPA estimates that it has or will in the future incur response costs, not inconsistent with the NCP, at the Granby Subdistrict in the amount of $1,958,564. This work includes sampling, provision of bottled water, remediation of mine tailing piles and oversight of installation of the water system. ASARCO is jointly and severally liable to the United States for this Site for these costs (plus interest due under 42 U.S.C. § 9607(a)).

125. EPA estimates that it has or will in the future incur response costs, not inconsistent with the NCP, at the Spring City/Spurgeon Subdistrict in the amount of $1,582,245.

Exhibit E

This work includes remediation of mine tailings piles and installation of a water system to areas where residential water-supply wells were impacted by groundwater that was contaminated by ASARCO's or its predecessors operations. ASARCO is jointly and severally liable to the United States for this Site for these costs (plus interest due under 42 U.S.C. § 9607(a)).

Richardson Flat Tailings Site, Park City, Utah

126. The Richardson Flat Tailings Site is approximately three and one half miles northeast of Park City, in Summit County, Utah. Richardson Flat is a former mine tailings impoundment. It covers approximately 160 acres immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248. Park City Ventures was a Utah partnership formed by ASARCO's predecessor, American Smelting and Refining Company, and Anaconda Company, a predecessor of the Atlantic Richfield Company. Park City Ventures conducted mining and milling activities and used Richardson Flat as a depository for mill tailings from 1970 until 1979.

127. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site.

128. EPA issued a Record of Decision (ROD) in July 2005, providing for removing contaminated sediments from the nearby wetlands, covering contaminated sediments in the diversion ditch, capping the tailings impoundment with clean fill and the imposition of deed restrictions on future land and groundwater use at Richardson Flat.

129. ASARCO is liable to EPA for unreimbursed response costs of approximately $607,000 (plus interest due under 42 U.S.C. § 9607(a)) for site assessment work.

Stephenson Bennett Mine Site

130. This site in Dona Ana County, New Mexico, was previously identified in the U.S.

Exhibit E

Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of $791,221 for past response costs plus interest.

Tar Creek Site

131. The 40-square-mile Tar Creek Superfund Site consists of the areas of Ottawa County, Oklahoma, that have been contaminated by mining waste generated by lead and zinc mining that began in the late 1800's and ceased in about 1970. Ottawa County is located in northeastern Oklahoma on the Kansas and Missouri borders. The principal on-Site cities located in the mining area include Picher, Cardin, Commerce, Quapaw, and North Miami.

132. ASARCO is the corporate successor to Federal Mining and Smelting Company ("Federal"). Federal conducted mining or milling operations on some or all of eleven Ottawa County properties that were part of the Site, at various times during the period from 1918 to about 1952. During those operations, Federal dumped or spilled lead, cadmium, and zinc-contaminated chat and other tailings on the Site in chat piles or tailings ponds. Federal's operations also emitted contaminated tailings onto OU2 and OU4 as wind-borne dust and on OU5 as waterborne sediment during mining and milling operations.

133. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2) at OU2, OU4, and OU5 because it is a former owner/operator of a facility at the time of disposal of hazardous substances at the facility within the meaning of 42 U.S.C. § 9607(a)(2).

134. EPA has incurred response costs, not inconsistent with the NCP, totaling approximately, $154,458,203 at OU2, OU4 and OU5 as of June 30, 2006.

135. The following summarizes EPA's response actions at OU2, OU4, and OU5:

Exhibit E

a. OU2 - OU2 is generally the residential areas of the Site. Residents, especially children, were directly exposed to contaminated mine and mill tailings in residential yard soil in the OU2 area. In the mid 1990's, about 21 percent of the children living in OU2 were found to have elevated blood lead levels. In response, beginning in 1994, EPA began sampling soils at day care facilities, school yards, athletic fields, playgrounds and other areas where children tend to congregate. EPA later expanded its sampling activity to include all residential areas of the Site. Using its removal action authority, beginning in 1995, EPA began to excavate lead- and cadmium-contaminated soil in residential areas. Concurrently, EPA began a remedial investigation and feasibility study (RI/FS) for OU2. In 1997, EPA issued a Record of Decision (ROD) memorializing its selection of a remedy to address contaminated soil in the residential areas of Operable Unit 2. Under the removal actions and under the Operable Unit 2 ROD, EPA has excavated lead-contaminated soil at approximately 2,150 homes and properties. Since EPA has undertaken the action to address contaminated soil in Operable Unit 2, blood lead levels in Site children have decreased dramatically and are now close to national averages. The OU2 response action is almost complete and additional costs should not exceed $5.1 million. EPA has incurred OU2 response costs of approximately $134,472,935 as of June 30, 2006.

b. OU4 - OU4 generally means contaminated parts of the Site (both urban and rural) that are not presently used for residential purposes or which are sparsely used for residential purposes. EPA has just completed its RI/FS for OU4, and is preparing a proposed plan of action for public comment. EPA cannot be sure of the cost of the response action for OU4 until the National Contingency Plan remedy selection process is complete, but EPA projects that costs will be between $122,000,000 and $328,000,000. Unreimbursed costs incurred for OU4 as of June 30, 2006, are approximately $9,405,163.

Exhibit E

c. OU5 - OU5 addresses contaminated sediments in Tar Creek (here meaning the stream), from the point at which Lytle Creek enters Tar Creek down to the lake-head delta at Grand Lake. OU5 also includes contaminated sediments in Elm Creek from its origin near the Kansas border to its convergence with the Neosho River. EPA's investigations of OU5 are preliminary, and the cost of the OU5 liability is presently undetermined and this claim, for future OU5 costs, is therefor filed as a contingent unliquidated claim for such liability. Costs incurred for OU5 as of June 30, 2006, are approximately $66,597.00

136. As discussed above, EPA shall incur substantial additional costs in performing further response actions at OU2, OU4 and OU5. At OU4 the additional costs will generally be incurred to address the tens of millions of cubic yards of mining waste that remain on the site in chat piles and tailings ponds. At OU5, additional costs may be incurred to address contaminated sediment in the stream beds described above.

137. EPA does note that to the extent it performs further work at OU5 such work would likely be work that is also the subject of the natural resource damage claim that is being made in this action by the United States Department of the Interior and the performance of such work may have the effect of reducing the amount of restoration work and damages asserted by the Department of the Interior in its proof of claim.

138. ASARCO is jointly and severally liable to the United States for past and future costs this Site as identified above (plus interest due under 42 U.S.C. § 9607(a)).

Taylor Springs

139. The ASARCO Taylor Springs Site is located in the Village of Taylor Springs, Montgomery County, Illinois, and consists of approximately 673 acres, of which 303 acres are

Exhibit E

wooded, 189 acres are used for agriculture and the remaining 181 acres comprise the former and current site operations area. There are several lakes located on the northwest edge of the site as well as drainage routes that flow through a series of wetlands and into the Middle Fork of Shoal Creek. Large quantities of zinc slag containing lead and other metals that were spread over the smelter facility, residential and municipal areas of Taylor Springs, Illinois.

140. ASARCO purchased the site operations area and surrounding property from American Zinc Lead and Smelting Company (now Blue Tee Corp.) in 1971 and operated the facility. ASARCO maintains ownership of the site operations area and portions of the surrounding property. The site was proposed for the NPL in April 2006. EPA is conducting a removal action that involves a determination of the extent, if any, of high concentrations of lead in residential and municipal soils from slag in Taylor Springs and expects to commence RI/FS work for this Site.

141. EPA has incurred $174,155.57 as of June 30, 2006 in unreimbursed response costs not inconsistent with the NCP.

142. EPA has only recently become involved at this Site and the nature and extent of the contamination is still under investigation. Total future costs at the Site are estimated to be between $9,000,000 and $38,000,000 depending on the volume of soils needing to be excavated and whether they will be disposed of on the smelter facility or off-site. A significant portion of these cleanup activities will be on property owned by ASARCO.

143. ASARCO is liable to the United States under Section 107 of CERCLA with respect to the Taylor Springs Site because (a) it is the owner of a portion of the Site and (b) was the owner of a portion of the Site at the time of disposal of hazardous substances.

144. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204

Exhibit E

infra.

145. ASARCO is jointly and severally liable to the United States for this Site in an amount between $9,174,155 and $38,174,155.

Vasquez Blvd./Interstate -70 Superfund Site

146. This site in Denver, Colorado, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $347,176 for past response costs, plus interest.

147. In addition, EPA has incurred unreimbursed past costs for work on the OU1 portion of the Site in the amount of $122,305.

148. In addition to the costs identified in the U.S. Initial Proof of Claim, EPA estimates that additional and future work at the Site will be $2,970,000. This work will include the conclusion of the RI/FS for and the implementation of the response actions selected for OU2.

149. ASARCO is liable to the United States under Section 107 of CERCLA with respect to this Site because it was the owner of a portion of the Site at the time of disposal of hazardous substances. ASARCO is jointly and severally liable to the United States for this Site as in the total amount of $3,439,481 (plus interest due under 42 U.S.C. § 9607(a)).

CERCLA LIABILITIES TO THE DEPARTMENT OF AGRICULTURE

150. ASARCO is liable under CERCLA to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites set forth in paragraphs 151 to 194 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites.

Exhibit E

Response costs have been and will be incurred by the United States Department of Agriculture or other agencies of the United States at each of the Sites not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended.

Azurite Mine Site

151. This site in Whatcom County, Washington, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $219,410 for response costs incurred through November 30, 2005.

152. In addition to the costs identified in the U.S. Initial Proof of Claim, the USDA has incurred additional past response costs of $10,063.75.

153. Because the EE/CA for this Site has not been completed, the cost of the USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, the USDA estimates that additional and future work at the Site will cost $15,000,000. The future work for the site requires road improvements/construction to access the site, and either removing the hazardous substances for off-site disposal or construction of an on-site mine waste repository, and long-term operation and maintenance costs.

154. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $15,229,473 (plus interest due under 42 U.S.C. § 9607(a)).

Black Pine Mine Site

155. This site near Phillipsburg, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference.

156. In the U.S. Initial Proof of Claim the United States asserted a past cost claim of

Exhibit E

$21,500, for costs incurred through September 30, 2005. The United States hereby withdraws that claim.

157. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, the USDA estimates that additional and future work at the Site will cost $188,016. The response action would consist of: 1) excavating heavy metal laden soils on National Forest Service lands onsite; 2) hauling these contaminated soils to a constructed repository for internment; 3) replacing the contaminated soils with clean fill; and 4) Forest Service oversight of the project contractor.

158. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $188,016 (plus interest due under 42 U.S.C. § 9607(a)).

Combination Mine Site

159. This site near Phillipsburg, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $31,712 for response costs incurred through December 21, 2005.

160. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work on the USDA portions of the Site, including the preparation of an EE/CA for the Site and the implementation of all necessary response actions to protect the public health and the environment, will be approximately $510,325. The response action would consist of: 1) excavating heavy metal laden tailings located in pockets along the stream bank of the Lower Willow Creek drainage; 2) hauling these contaminated tailings to a constructed repository for internment; 3) reconstructing

Exhibit E

the stream bank area; and 4) Forest Service oversight of the project contractor.

161. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $542,037 (plus interest due under 42 U.S.C. § 9607(a)).

Flux Mine Site

162. This site near Patagonia, Arizona, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $10,575 for response costs incurred through December 22, 2005.

163. In addition to the costs identified in the U.S. Initial Proof of Claim, USDA has incurred additional past costs through May 31, 2006 of $790.72.

164. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work at the Site will cost between $170,000 and $250,000. The site has been reclaimed, however, water is infiltrating through a covered waste rock pile and emerging as low-pH, metal laden water, which then drains to the nearby stream. The response action would consist of: 1) additional characterization of the hydrology and water quality at the site; 2) construction of an upgraded cover material, diversion structures, and a passive water treatment system as necessary; and 3) oversight by the Forest Service of the project contractor.

165. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $181,365.72 - $261,365.72 (plus interest due under 42 U.S.C. § 9607(a)).

Golinsky Mine Site

166. This site near Redding, California, was previously identified in the U.S. Initial

Exhibit E

Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $2,264,476 for response costs incurred through December 21, 2005.

167. The California Regional Water Quality Control Board issued a clean-up and abatement order to the USDA to abate the acid mine drainage flowing from the Site into Little Backbone Creek, on USDA land, upstream of Shasta Lake. In July 1997, USDA sent ASARCO a CERCLA notice letter requesting that ASARCO perform response actions at the Site. USDA initiated a draft EE/CA in 1998 and developed a Removal Action Memorandum and draft AOC in 1999. ASARCO refused to participate in the initial response actions, which have failed fully to remedy the acid mine drainage as required by the California Regional Water Quality Control Board's clean-up and abatement order.

168. The revised EE/CA, based on a pilot study of a passive treatment alternative, will be completed during the summer of 2006. In addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that future work, implementing, overseeing, maintaining, and evaluating the passive treatment alternative, will cost $6,581,080. The future costs are for construction of a three cell passive treatment system to collect and treat acid mine discharge, plus operations and maintenance costs for 30 years.

169. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $8,845,556 (plus interest due under 42 U.S.C. § 9607(a)).

Iron Mountain Mine Site

170. This site near Superior, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $83,519 for response

Exhibit E

costs incurred through December 22, 2005.

171. The Iron Mountain Mine itself is on private land owned by ASARCO. Mill tailings from the mine have been released along approximately 4 miles of Flat Creek, half of which lie within USDA administered land. USDA's 2003 Site Investigation determined that approximately 1,000,000 cubic yards of contaminated sediments and soils on USDA land along Flat Creek require removal to a joint mine waste repository.

172. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work on the USDA portions of the Site will cost $1,500,000. Future removal action work may consist of excavation and interment of tailings material into a repository at the site. Additionally, stream restoration should also occur.

173. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $1,583,519 (plus interest due under 42 U.S.C. § 9607(a)).

174. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

Jack Waite Mine Site

175. This site near Prichard, Idaho, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $116,539 for response costs incurred through December 21, 2005.

176. During ASARCO's operation of the Site from 1934-1961, ASARCO produced at least 411,734 of the approximately 600,000 tons of ore the mine produced during its entire

Exhibit E

operational history. The mine, all four tailings ponds, and other areas of scattered tailings are on USDA lands.

177. In accordance with the March 2000 AOC with the USDA and EPA, ASARCO recently completed a final EE/CA, which contains a range of cleanup alternatives costing up to $21,000,000. Although no alternative has been selected, the USDA estimates that, in addition to the costs identified in the U.S. Initial Proof of Claim, additional and future work at the Site, including oversight and a cost contingency, will cost an estimated $8,236,000. The response action will generally consist of consolidating waste in three repositories, one at tailings pond 3, the second at the Duthie Townsite near tailings pond 2, and moving tailings pond one to a repository at Borrow Area 2. The discrete areas of tailings scattered along the creek will be removed from the flood plain and placed in one of the repositories. In addition, work required will include regrading the 1500-level waste rock pile and rerouting the adit discharge around the waste rock pile.

178. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $8,352,539 (plus interest due under 42 U.S.C. § 9607(a)).

Upper Blackfoot/Mike Horse Mine Site

179. This site in Helena, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of $67,628 for response costs incurred through December 23, 2005.

180. In addition to continuing leakage from the Mike Horse Tailings Impoundment dam, a recent USDA analysis detected voids in the dam, caused by intermittent piping of tailings or dam subsidence, of up to fourteen feet across, increasing seepage due to internal erosion, and

Exhibit E

excessive reservoir levels. The dam cannot be relied on over the long term to prevent the impoundment from flowing into the headwaters of the Upper Blackfoot River.

181. ASARCO has prepared a draft EE/CA. Because no alternative has been selected, the cost of the USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work at the Site will cost $35,000,000. Four actions are needed at the Upper Blackfoot/Mike Horse complex. The first three actions have to do with the controlling of mill tailings and other mine waste materials within Bear Trap Creek, Lower Mike Horse Creek, and the Upper Blackfoot River. These actions may include the total or partial removal of the tailings and waste material from the three drainages with placement within a repository structure. The fourth action at the Upper Blackfoot/Mike Horse complex is the mitigation of the safety and the potential environmental impacts associated with the Mike Horse dam and tailings impoundment. Included in the action is the decommissioning of the dam by totally or partially removing the feature. In addition, the action will include the mitigation of the tailings that are impounded behind the existing dam structure

182. ASARCO is jointly and severally liable to the United States for this Site in the total amount of $35,067,628 (plus interest due under 42 U.S.C. § 9607(a)).

CERCLA LIABILITIES TO THE DEPARTMENT OF THE INTERIOR

Tar Creek

183. The United States incorporates by reference its prior allegations regrading ASARCO's involvement at the Tar Creek Site in Oklahoma.

184. The Department of the Interior, through its Bureau of Indian Affairs (BIA), has incurred response costs, and will continue to do so, in connection with several Operable Units at

Exhibit E

the Tar Creek site, including Operable Units 2 and 4. BIA's activities include, but are not limited to, assisting EPA in conducting and monitoring response actions, coordinating EPA activities at the site with Indian landowners, conducting surveys of potential sources of contamination, providing physical security and engineering controls to restrict access to sources of contamination, implementing and enforcing institutional controls to prevent re-contamination of Indian lands, performing community outreach and education, conducting post-response surveys of residential properties, reviewing and commenting on EPA investigative reports and proposed response actions, working with state and federal regulators, and with Tribal representatives, to develop a consensus on approaches to address significant sources of contamination, and undertaking other activities to ensure that planned and ongoing response actions protect public health and the environment. BIA estimates that it has incurred response costs not inconsistent with the National Contingency Plan to be $2,100,922.99 and will incur additional response costs not inconsistent with the National Contingency Plan of between $6.6 and $8.9 million (plus interest due under 42 U.S.C. § 9607(a)).

185. ASARCO is jointly and severally liable to the United States for these costs.

CERCLA LIABILITIES TO THE UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER COMMISSION

El Paso (USIBWC)

186. The International Boundary and Water Commission, United States and Mexico (IBWC) is an officially recognized international organization created by Treaty between the United States and Mexico. The United States Section of the IBWC (USIBWC) is an independent bilateral organization within the U.S. federal government.

187. The USIBWC constructs, operates and maintains the Rio Grande Canalization

Exhibit E

Project. One component of the Rio Grande Canalization Project is the American Dam and Canal, which provides the means for physical control and diversion of waters in the Rio Grande. Operation and maintenance of the project is carried out by the American Dam Field Office situated on 5.56 acres immediately across from ASARCO's smelting operation in El Paso, Texas.

188. The 2-mile long American Canal is subdivided into three open canal segments, the upper, middle and lower channels. The upper channel includes the former site of Smelter Town, the middle reach parallels the Burlington Northern and Santa Fe Railroad and the lower reach diverges from the Highway in the area of Old Fort Bliss.

189. The United States incorporates by reference its previous allegations regarding the El Paso Smelter and the El Paso Metals Survey Site. The contamination at the American Dam, Canal and Field office properties have come to be located on these properties because of releases from the El Paso Smelter.

190. Investigations have established that there are unacceptable levels of lead and arsenic in the upper two third of the two-mile project and that the levels are attributed to the canal's location adjacent to the Site. The soil and groundwater contamination are related to the historic operations of the smelter. In addition to lead and arsenic being present in the soil, the groundwater surrounding the canal contains the two elements. The presence of these heavy metals in the groundwater is an indication that for many years these metals have slowly leeched from the soil above into the groundwater. In surface and subsurface soils arsenic was routinely detected at concentrations above industrial screening levels of 2 milligrams per kilogram (mg/kg). Lead was occasionally detected at concentrations above both EPA residential and industrial screening levels of 400 and 2,000 mg/kg, respectively. Arsenic and lead need to be

Exhibit E

removed from the groundwater before it is discharged into a canal or stream. They estimated that the flow rates of extracted groundwater requiring treatment would likely be as much as what flows on the riverbed surface. Arsenic levels ranged from 0.1 mg/L to a maximum of 1.84 mg/L while lead levels were detected above the action level of 0.015 mg/L. Groundwater percolates into the American Canal through weep holes and fractured joints in the canal. Considering lead and arsenic exist in the groundwater, it is reasonable to assert that these elements are contaminating the canal.

191. In addition, surface soils on the property owned by USIBWC have been heavily contaminated by releases from the Site. Studies have recorded contaminants in the top surface layer that exceeded outdoor industrial worker soil screening levels and further recommended removing the top one-inch of soil, along with the preparation of an exposure mitigation plan. The reports note the presence of elevated concentrations of arsenic, cadmium, lead, mercury, tin and zinc in the soils.

192. The USIBWC has previously incurred response costs at this Site, not inconsistent with th NCP, related to environmental remediation efforts of contaminated soil and ground water of approximately $186,283.

193. USIBWC anticipates that substantial response actions will be needed as to both the surface soils and groundwater within the canal and surface soils at the field office. This work would likely include: the treatment and disposal of groundwater, the treatment and disposal of soil, monitoring of the construction site for airborne contaminants, testing of soil and water during construction, monitoring for the presence of contaminants for personnel. Removal of surface layer of soil, treatment and replacement or removal of contaminated soil to an authorized disposal site, before and after analysis of the Site. However, the cost of such response action is

Exhibit E

presently undetermined and this claim is therefore filed protectively and filed protectively as a contingent unliquidated claim for such liability. See Paragraph 61, supra.

194. ASARCO is jointly and severally liable to the United States under CERCLA with respect to this Site because (a) it is the owner of a portion of the Site, and (b) it was the owner of a portion of the Site at the time of disposal of hazardous substances and (c) it is a party who arranged for disposal of hazardous substances.

PENALTIES

Encycle Consent Decree

195. **Supplemental Environmental Project: Coy Mine**: The Coy Mine was a copper mine operated by ASARCO in Tennessee. During the mid 1990s, EPA determined that ASARCO had violated its National Pollutant Discharge Elimination System permit. The violations at the Coy Mine were resolved in a consent decree filed in United States of America and State of Texas v. Encycle/Texas, Inc. and ASARCO, Inc. [H-99-1136]. The decree was filed in the Southern District of Texas on April 15, 1999, and entered on October 6, 1999.

196. ASARCO agreed to perform a supplemental environmental project ("SEP") at the Coy Mine which consisted of constructing a four-acre wetland area. The SEP was to be completed by November 2003. ASARCO has not completed this work. The consent decree provides that ASARCO shall pay a penalty of $200,000, should it not perform the SEP. Hence, ASARCO is liable to the United States for $200,000 under the above referenced consent decree.

197. **Corpus Christi Environmental Easement**: The October 1999 Consent Decree obligates Debtor to deed a parcel of land in Nueces County, Texas, into a conservation easement for public enjoyment, habitat enhancement, environmental research, and education. After deeding and fencing the parcel, Debtor halted the project at approximately forty percent

Exhibit E

complete. Pursuant to the terms of the Consent Decree, Debtor is to pay stipulated penalties of up to $1 million dollars – to be split evenly between the United States and the State of Texas – should Debtor fail to complete the project. Debtor is liable to the United States for stipulated penalties in the amount of $500,000, for failure of the Corpus Christi Environmental Easement project.

198. **Corpus Christi Metals Recycling Project**: The October 1999 Consent Decree obligates Debtor to recycle metals from waste materials received at the facility for a period of five years commencing one year after the entry of the Consent Decree. Debtor is required to recycle an average of 522,000 pounds of nickel, copper, chrome and/or tin per year to meet the terms of the project. Debtor did not perform the project. Pursuant to the terms of the Consent Decree, Debtor is to pay a stipulated penalty of up to $2.25 million – to be split evenly between the United States and the State of Texas – should Debtor fail to complete the project. Debtor is liable to the United States for stipulated penalties in the amount of $1,125,000 for failure of the Corpus Christi Metals Recycling project.

East Helena Consent Decree

199. In its Initial Proof of Claim, the United States asserted a claim of $6,018,000 on behalf of EPA for stipulated penalties for violations of the East Helena Decree and AOC 91-17 through February 3, 2003. All allegations contained therein are incorporated herein by reference.

200. In January 1998, ASARCO and EPA agreed to a settlement for alleged violations of RCRA and the Clean Water Act at ASARCO's smelter facility in East Helena. This settlement was embodied in a Consent Decree entered in United States v. ASARCO, CV 98-3-H-CCL. That decree requires, among other things, that ASARCO perform a Supplemental

Exhibit E

Environmental Program. Hence, ASARCO is obligated to perform this SEP. See Paragraph 61 supra. ASARCO is also liable for any penalty under the Consent Decree or the Clean Water Act that the Court determines in the event ASARCO fails to perform the SEP.

Hayden Post-bankruptcy Consent Agreement

201. On December 9, 2005, ASARCO LLC and EPA entered into a Consent Agreement and Final Order ("CAFO"), Docket No. CAA-09-2005-0016. The CAFO resolved claims alleged by Region IX in an Administrative Complaint, and Notice of Opportunity for Hearing filed on September 28, 2005. In the CAFO, ASARCO agreed that any plan of reorganization ASARCO submits to the Bankruptcy Court must include a penalty in the amount of $62,411 as an allowed general unsecured claim.

Omaha Lead Smelter Superfund Site

202. The penalty claim relating to this site was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of at least $2,473,921 and up to but not more than $7,421,763.

PROPERTY OF THE ESTATE/DEBTOR-OWNED SITES

203. ASARCO also has or may in the future have environmental liabilities for properties that are part of its bankruptcy estate and/or for the migration of hazardous substances from property of its bankruptcy estate. ASARCO has potential environmental liabilities at the following properties that it owns, including but not necessarily limited to, properties in the following locations: Hayden, AZ, Ray Mine, AZ, Mission Mine, AZ; Silver Bell Mine, AZ; Black Pine Mine, CO; California Gulch, CO; Globe, CO; Bunker Hill Basin and Box areas, ID; Beckemeyer, IL, Taylor Springs IL, East Helena, MT; Iron Mountain, MT; Mike Horse, MT;

Exhibit E

Amarillo, TX; El Paso, TX; Encycle facility, TX; Houston, TX; and Tacoma and Ruston, WA.

204. In accordance with 28 U.S.C. § 959, ASARCO is required to comply with non-bankruptcy law, including all applicable environmental laws, in managing and operating its property. Upon confirmation of any Plan of Reorganization, reorganized ASARCO will be liable as owner or operator of property in accordance with applicable environmental law. The United States is not required to file a proof of claim relating to property of the estate other than for response costs incurred prior to the petition date. This Supplemental Proof of Claim is filed only protectively with respect to post-petition response costs or response action relating to property of the estate. The United States is entitled to administrative expense priority for, inter alia, any response costs it incurs with respect to property of the estate after the petition date. The United States reserves the right to file an application for administrative expense or take other appropriate action in the future with respect to property of the estate.

SECURED CLAIM

205. The United States hereby gives notice that it asserts it has secured status with respect to ASARCO's liabilities for the following:

(A) CERCLA lien with respect to portions of the Commencement Bay Nearshore Tideflats Superfund Site in Tacoma and Ruston, Washington, see Paragraphs 24-32 supra;

(B) CERCLA lien with respect to Globe Site in Denver, Colorado, see Paragraphs 90-95 supra;

(C) CERCLA lien with respect to the East Helena Site in Montana, see Paragraphs 33-43 supra;

(D) The LCCHP Trust at the California Gulch Site in Colorado and residual proceeds,

Exhibit E

see Paragraphs 19-20 supra.

(E) Additionally, the ASARCO Environmental Trust was created pursuant to the Consent Decree entered in United States v ASARCO, Inc et al, Civil Action No. 02-2079 (D. Az). The primary res of that Trust is a promissory note with an original principal balance of $100,000,000 from Americas Mining Corporation and guaranteed by Grupo Mexico, S.A. DE C.V. Pursuant to the terms of that promissory note, payments are due over eight years. All payments required to date have been made and $50,000,000 of principal remains unpaid. It is the position of the United States that the res of this Trust is not property of the bankruptcy estate. However, should it ever be determined that the res of that Trust is property of the estate then the United States is a secured creditor as to that promissory note and guarantee.

(F) IRS refund, see U.S. Initial Proof of Claim;

(G) Any disputed past cost amounts held in escrow by ASARCO pending dispute resolution, and

(H) Any insurance proceeds received by ASARCO on account of environmental liability to the United States.

MISCELLANEOUS

206. This Supplemental Proof of Claim reflects certain known liabilities of ASARCO to the United States. The United States reserves the right to amend this Supplemental Proof of Claim to assert subsequently discovered liabilities. The United States also reserves the right to amend this Supplemental Proof of Claim to update response costs or other information relating to the Sites included herein. This Supplemental Proof of Claim is without prejudice to any right

Exhibit E

under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

207. The above cost estimates for future response actions assume that ASARCO or other potentially responsible parties shall perform the required response actions. If EPA performs such response actions it will incur costs - including but not limited to, its indirect costs - significantly in excess of those estimated above. This Supplemental Proof of Claim is asserted as a contingent unliquidated claim for such costs.

208. As to costs already incurred, identified above, where the United States has alleged interest has accumulated under 42 U.S.C. § 9607(a) through a certain date, the United States is entitled to recover ongoing interest from the dates identified for each such site.

209. This Supplemental Proof of Claim is filed as a general unsecured claim except to the extent provided in Paragraph 205 (Secured Claims) and to the extent administrative expense priority exists relating to property of the estate, post-petition violations of law, or otherwise. The United States will file any application for administrative expense priority at the appropriate time. The United States' position with respect to injunctive, compliance, regulatory, and work obligations that are not claims under 11 U.S.C. § 101(5) is set forth in Paragraph 61 supra.

210. Except as stated in this Supplemental Proof of Claim, no judgments against ASARCO have been rendered on this Supplemental Proof of Claim.

211. Except as stated in this Supplemental Proof of Claim, no payments have been made by ASARCO on this Supplemental Proof of Claim. The United States will amend this Supplemental Proof of Claim in the future to reflect any payments received from other responsible parties or the ASARCO Environmental Trust.

212. This Supplemental Proof of Claim is also filed to the extent necessary to protect

Exhibit E

the United States' rights relating to any insurance proceeds received by ASARCO relating to sites discussed herein and any funds being held in escrow by ASARCO relating to the sites discussed herein.

213. Additional documentation in support of this Supplemental Proof of Claim is too voluminous to attach and is available upon request.

Exhibit E

Respectfully submitted,

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OF COUNSEL:

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Exhibit

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
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Telephone (202) 514-5409
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July 29, 2006

BY OVERNIGHT MAIL

ASARCO LLC
c/o The Trumble Group LLC
4 Griffin Rd, North
Windsor, CT 06095-1511

Re: In re ASARCO LLC Case No. 05-21207 (Bankr. S.D. Tex.)

Gentlemen and Ladies:

In accordance with the Court's Orders in the above-referenced case, enclosed please find an original copy of two Proofs of Claim of the United States in the above-referenced cases titled: 1) Supplemental Proof of Claim of the United States on Behalf of the United States Department of the Interior and the Department of Agriculture, Against ASARCO, LLC; and 2) Supplemental Proof of Claim of the United States on Behalf of the United States Environmental Protection Agency, the Department of Agriculture, the United States Department of the Interior, and the United States Section of the International Boundary and Water Commission against debtor ASARCO, LLC ("ASARCO") Against ASARCO, LLC, Please file and docket these Proofs of Claim. If you have any questions, please do not hesitate to call me. Thank you for your assistance.

Sincerely,

David L. Dain
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Div.
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 2004
(202) 514-3644

Exhibit E

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 30 2003

MEMORANDUM

SUBJECT: Transmittal of Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action

FROM: Susan E. Bromm
Director, Office of Site Remediation Enforcement
Robert Springer
Director, Office of Solid Waste

TO: RCRA Senior Policy Advisors, Regions I - X
RCRA Enforcement Managers, Regions I - X
RCRA Key Contacts, Regions I - X

This memorandum transmits the attached document entitled "Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action." Financial assurance is an important aspect of the corrective action program. This document provides decision makers guidance in the implementation of financial responsibility requirements to ensure that owners and operators provide evidence of financial responsibility for corrective action that may become necessary in the future. This guidance will also assist the states that are authorized for corrective action in the implementation of financial assurance requirements, *so* please share it with them as appropriate.

In some cases there may be some facility owners and operators that are unable or fail to provide financial assurance. Prompt enforcement action against non-compliant, financially viable entities is generally appropriate. We recognize that facility owners and operators that are bankrupt or have other financial problems may have difficulty securing financial assurance. We encourage innovative and site-specific approaches to address the difficulties financially stressed companies have in meeting financial assurance requirements. This guidance does not prescribe the use of any particular approach. Decision makers have the discretion to use approaches described here, or on a case-by case basis adopt a different approach as appropriate.

Exhibit G

We appreciate the input we received from the Regional and State representatives who helped shape this document. Thank you to those of you who allowed members of your staffs to work on it. Some of them participated on the workgroup, and some reviewed drafts of the guidance and provided comments. We received input from all 10 Regions as well as from ASTSWMO's Corrective Action and Permitting Task Force and the States of Arkansas, California, Florida, Illinois, Michigan, New York, Ohio, Virginia, and Washington.

Our offices are working on several projects in the area of financial assurance. We are forming work groups with your staffs and interested states to facilitate communication by sharing case studies and best practices. In addition, financial assurance training modules and courses are under development, as are efforts to include financial assurance data in RCRAInfo. For more information regarding financial assurance for corrective action, please contact Mary Bell at (202) 564-2256 or Dale Ruhter at (703) 308-8192.

Attachment

cc:
Regional Counsels (Regions I - X)
Paul Connor, OECA/OSRE
Neilima Senjalia, OECA/OSRE
Sandra Connors, OECA/OSRE
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Exhibit G

Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action

Table of Contents

Exhibit G

Section 1: Introduction

The purpose of this document is to provide guidance to EPA Regions and States authorized for corrective action ("authorized states") regarding corrective action financial responsibility requirements at hazardous waste facilities subject to the Resource Conservation and Recovery Act (RCRA). This guidance addresses RCRA corrective action financial responsibility provisions at hazardous waste treatment, storage and disposal facilities (TSDFs) that are permitted or subject to RCRA § 3008(h) orders. [1]

This document does not address financial responsibility requirements for closure, post-closure care or third-party liability. [2] In addition, this document does not address every available option or approach; and some of the ideas suggested in this document may not be appropriate for all facilities. Finally, regulators should be aware that state laws and regulations may differ from federal requirements and may affect how the regulatory agency handles financial responsibility requirements.

Corrective action entails conducting cleanup activities to address all unacceptable risks to human health or the environment from the release of hazardous waste or hazardous constituents at TSDFs. [3] The corrective action process generally includes the following elements: initial site assessment, site characterization, environmental indicators, selection and implementation of the remedy. [4]

If corrective action, when necessary, cannot be completed prior to the issuance of a permit to an owner or operator of a TSDF by the Administrator or an authorized State, the permit must contain a schedule of compliance for completing such corrective action and assurances of financial responsibility. [5] Thus, both EPA and authorized States must include assurance of financial responsibility for corrective action in permits that require corrective action. EPA is

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[1] Advance Notice of Proposed Rulemaking, Scope and Definitions, 61 Fed. Reg. 19432, at 19441 (May 1, 1996) (hereinafter "the 1996 ANPR").

[2] Regulations for closure, post-closure care and third-party liability are found in 40 CFR Part 264, Subpart H for owners and operators of permitted hazardous waste facilities, and 40 CFR. Part 265, Subpart H for owners and operators of facilities operating under interim status.

[3] See, e.g., discussion of corrective action authority in the context of permitting and Section 3008(h) orders in the 1996 ANPR at 19442-43 and 19453-54 (discussion of the definitions of "release" and "solid waste management unit").

[4] The 1996 ANPR at 19436 and 19443; Environmental Indicators for Corrective Action and Corrective Action Process. RCRA Cleanup Reforms (www.epa.gov/correctiveaction).

[5] RCRA § 3004(u), 42 U.S.C. § 6924(u).

Exhibit G

authorized to issue administrative orders or file civil judicial actions that impose corrective action financial responsibility requirements on facilities subject to 3008(h) orders. [6]

The primary purpose of the financial responsibility requirements for corrective action is to assure that funds will be available when needed to conduct necessary corrective action measures. [7] The intent of the RCRA financial responsibility requirements is, in part, to reduce the number of TSDFs that are insolvent or abandoned by their owners and operators, leaving the costs of corrective action to be borne by the public. [8]

Congress intended that facility owners and operators ensure that adequate funds would be available to complete the required corrective action so contaminated TSDFs do not become the responsibility of the federal Superfund or State cleanup programs. [9] It is important for regulators to require facility owners and operators to obtain financial assurance when the companies are financially healthy, so that resources are set aside in the event a company hits a financial decline.

The Agency recognizes that there may be some facility owners and operators that are unable or fail to provide financial assurance. Prompt enforcement action against non-compliant, financially viable entities is generally appropriate. In cases where the owner or operator is insolvent or bankrupt and is having difficulty securing financial assurance, regulators could consider requiring the owner or operator on a case-by-case basis to provide financial assurance pursuant to a compliance schedule as part of an enforcement action, while also performing the necessary corrective action. Regulators are encouraged to work with financially distressed facility owners and operators to develop practical facility-specific cleanup goals that protect human health and the environment, and to assure, using all appropriate tools, that the regulated community complies with financial assurance requirements.

EPA has not promulgated detailed regulations for financial assurance for corrective action. EPA codified the statutory requirements for owners and operators of permitted facilities, but did not codify requirements for owners and operators of facilities operating under interim status. Regions and authorized States have discretion in determining how to address the corrective action financial assurance requirements at each RCRA TSDF to meet the regulatory and statutory requirements in light of the specific circumstances at that facility.

EPA recognizes that the main goal of regulators in implementing the corrective action

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[6] RCRA § 3008(h), 42 U.S.C. § 6928(h); see e.g., 63 Fed. Reg. 56710, at 56716 (Oct. 22, 1998) and 65 Fed. Reg. 70954, at 70966 (Nov. 28, 2000).

[7] Interim final rule with request for comments, Future Regulatory Activity, 47 Fed Reg. 32274, at 32279 (July 26, 1982).

[8] The 1996 ANPR at 19434, Statutory and Regulatory Requirements.

[9] The 1996 ANPR at 19434, Statutory and Regulatory Requirements.

Exhibit G

requirements is to protect human health and the environment presented by releases at RCRA facilities, and that financial assurance involves matters with which regulators are sometimes not familiar. By this guidance, EPA hopes to assist regulators in understanding the purpose and importance of financial assurance for corrective action and the regulator's role in ensuring that financial assurance is sufficient.

This guidance document does not address all issues related to financial responsibility for facilities subject to RCRA corrective action. We expect to issue follow-up guidance to address some of the outstanding issues, such as model language options for administrative orders.

Section 2: Statutory and Regulatory Requirements for Providing Financial Assurance for Corrective Action at Hazardous Waste Treatment, Storage and Disposal Facilities

RCRA TSDF owners and operators are required to demonstrate financial responsibility for corrective action as may be necessary to protect human health and the environment primarily to ensure adequate funds are available to undertake the necessary corrective action at the facility in the event, for example, the facility owners and operators are unable or fail to do so. Under RCRA § 3004(u), permits issued by the Administrator or a State "shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurance of financial responsibility for completing such corrective action."

RCRA § 3004(v) further requires that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the facility owner or operator concerned demonstrates to the satisfaction of the Administrator that, despite its best efforts, it was unable to obtain the necessary permission to undertake off-site corrective action.

Federal regulations at 40 CFR § 264.101 codify the requirements of RCRA § 3004(u) and (v). "The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit" and "the permit will contain assurances of financial responsibility for completing such corrective action." Further, "[t]he owner or operator must implement corrective actions beyond the facility property boundary, where necessary . . . "; and "[a]ssurances of financial responsibility for such corrective action must be provided."

At permitted TSDFs, financial assurance requirements for corrective action are imposed through the permit. The part of the permit that includes requirements for financial assurance for corrective action may be issued by an authorized State, or where States are not authorized, by EPA.

At facilities that are issued RCRA § 3008(h) orders, EPA may rely on its administrative order authority, rather than on permits, to impose financial assurance requirements. Under RCRA §

3008(h), EPA may issue administrative orders requiring corrective action or such other response measures as EPA may deem necessary to protect human health or the environment. EPA's authority under this section includes, among other things, the authority to require financial assurance for corrective action. Most authorized States have § 3008(h)-like authority. Regulators are encouraged to include financial responsibility requirements in corrective action orders issued to TSDF owners and operators.

RCRA regulations authorize the use of various mechanisms to provide financial assurance for closure, post- closure, and third-party liability including any one, or a combination of, if appropriate, trust fund, surety bond, letter of credit, insurance, corporate guarantee, or qualification as a self-insurer by means of a financial test. EPA may allow these financial mechanisms to establish financial assurance for corrective action under either permits or administrative orders. EPA may allow other financial mechanisms as well if the facility owner or operator demonstrates to the satisfaction of the Agency, that such mechanisms provide an acceptable level of financial assurance, and the mechanism is otherwise consistent with federal law. [10] Authorized States may allow these or other financial assurance mechanisms that are consistent with the requirements of their own laws and provide adequate assurance. [11]

Section 3: Implementation of Financial Assurance Requirements for Corrective Action: Timing, Cost Estimating and Mechanisms

In the legislative history of RCRA § 3004(u), Congress expressed concern that unless all hazardous constituents released from solid waste management units at permitted facilities are addressed and cleaned up more sites will be added to the Superfund program in the future, with little prospect for control or cleanup. [12] Although detailed regulations to govern financial assurance for corrective action were proposed by the Agency, they were not finalized. Instead, EPA codified the statutory requirements for owners and operators of permitted facilities. The Agency has emphasized that regulators should ensure that financial assurance requirements are applied appropriately to ensure remedies proceed expeditiously and facility owners and operators have the necessary funds to implement corrective action. [13]

3.1 Timing and Cost Estimating

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[10] For further discussion of this subject, see preamble to the Proposed Rule, Allowable Mechanisms, 55 Fed. Reg. 30799, at 30856 (July 27, 1990), and RCRA § 3004(a) & (t), 42 U.S.C. § 6924(a) & (t); 40 CFR Parts 264, Subpart H & 265, Subpart H.

[11] RCRA § 3009, 42 CFR § U.S.C. § 6929.

[12] The 1996 ANPR at 19434, citing H.R. Rep. No. 198, 98th Cong., 1st Sess., part 1, 61 (1983).

[13] The 1996 ANPR at 19455.

Exhibit G

The Agency has acknowledged the difficulties regulators face in determining when financial assurance for corrective action should be established and the amount of financial assurance to require. In the 1996 ANPR, EPA stated that financial assurance demonstrations have been ordinarily required at the time of remedy selection. [14] The Agency has also said the degree of investigation and subsequent corrective action necessary to protect human health and the environment varies significantly across facilities. Since few cleanups will follow exactly the same course, decision makers should have significant latitude to structure the corrective action process, develop cleanup objectives, and select remedies appropriate for facility-specific circumstances.[15] Since no final rule was issued by the Agency concerning the timing of financial assurance for corrective action, regulators have the flexibility to tailor the timing and requirements for financial responsibility to facility-specific circumstances. [16]

In determining the timing and the amount of financial assurance at a particular site, there are several approaches for regulators to consider. One approach is to require financial assurance for known releases at the time of final remedy selection, and the associated cost estimates are known. The advantage of this approach is that the regulator can use this cost to determine the amount of financial assurance to require. However, a disadvantage to this approach is that funds are set aside relatively late in the process, often not before major costs are incurred. [17] Since it frequently takes several years from the time a facility becomes subject to corrective action for the facility to reach the final corrective measures selection stage of the process, there is a risk that a facility owner or operator's financial situation could deteriorate during that time. If the owner or operator's financial health declines and there is not sufficient financial assurance in place, the responsibility to fund the cleanup may shift to the regulating agency and/or taxpayers.

Another approach in determining the timing and amount of financial assurance at a particular facility is to require owners and operators to demonstrate financial assurance once it is determined corrective action is necessary, but before the corrective measures are selected and corrective action costs are known. This approach would require a facility owner or operator or the regulator to make an early estimate of the likely cost of corrective action at the facility, and require the facility owner or operator to provide financial assurance for that cost. After the corrective measures are determined and better cost estimates are known, the financial assurance could be adjusted up or down, consistent with the revised cost estimate. This approach would set aside funds for corrective action costs at an earlier stage. However, it may be difficult to

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[14] The 1996 ANPR at 19454, Financial Assurance.

[15] The 1996 ANPR at 19440, Program Management Philosophy.

[16] The 1996 ANPR at 19454, Financial Assurance.

[17] The 1986 ANPR at 37860, Timing and Amount of Financial Assurance.

Exhibit G

determine a reasonable amount for some facilities.[18]

Regulators also should consider the nature of the cleanup involved at a particular site. Although early implementation of the corrective action program focused on final cleanups, more recently the trend has been towards ensuring interim measures and stabilization. [19] Since final remedy implementation may be delayed at some facilities, based on information available at the beginning of the corrective action process, it may make sense to require TSDF owners and operators to demonstrate financial assurance for early stages of the corrective action process on a site-specific basis. For example, where it is known that the costs of the investigation are certain to be quite substantial and/or when the facility is in poor financial condition, regulators may wish to consider requiring financial assurance to cover the estimated cost of the investigation. At other facilities, regulators may determine it is necessary and appropriate to require financial assurance for significant interim measures as well. An example of such an interim measure is installing and maintaining a groundwater well system to stop a plume of contamination from further migration.

Initially, the financial assurance required could be limited to those activities, such as the investigation and interim measures, that are deemed necessary at the beginning of the process. Later, if it is determined that additional corrective measures are required and what those corrective measures will be, regulators could require financial assurance to be established for those corrective measures. Regulators could structure the financial assurance requirements in the permit or administrative order so that the facility owner or operator could demonstrate financial assurance incrementally. The financial assurance could be adjusted as the work is conducted, and as the costs of subsequent stages become known. Some financial assurance mechanisms might be better suited to this approach than others.

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[18] The 1986 ANPR at 37860, Timing and Amount of Financial Assurance.

[19] As the corrective action program began to mature it became clear to regulators that final cleanups were difficult and time consuming to achieve, and an emphasis on final remedies at just a few facilities could divert limited resources from addressing ongoing releases and environmental threats at many other facilities. As a result, the Agency established the Stabilization Initiative in 1991 which increased the rate of corrective actions by focusing on near-term activities to control or abate threats to human health and the environment and prevent or minimize the further spread of contamination. In addition, in response to the Government Performance and Results Act of 1993 (GPRA) and criticism that the agency focused too much on administrative process rather than actual cleanups, EPA developed two specific environmental indicators for the corrective action program: Human Exposures Controlled Determination and Groundwater Releases Controlled Determination. The indicators are facility-wide measures that are obtained when there are no unacceptable risks to humans due to contaminants or when migration of contaminated groundwater is controlled. Thus, the current approach to corrective action focuses on ensuring interim measures and stabilization actions (The 1996 ANPR at 19436).

There are potential advantages in requiring TSDF owners and operators to demonstrate financial assurance earlier and incrementally, rather than at final remedy selection. This approach could assure that funding will be available for stabilization activities so that the facility does not present an unacceptable risk in the near-term if it defaults. Demonstrating financial assurance incrementally could increase the amount of resources available for cleanup work while reducing the financial burden on the facility owners and operators of providing a large amount of financial assurance for remedy implementation.

Depending on the mechanism selected, it is possible for the regulator to structure the requirement for financial assurance so that the amount set aside is reduced or increased at specified intervals as the corrective action work is characterized and conducted. Permits or administrative orders would be modified accordingly. Regulators may structure the financial assurance so the amount is reconsidered at regular intervals (e.g., annually) corresponding with completion of the various stages of corrective action at a particular facility. The amount of financial assurance should also account for inflation.

We recommend that estimates be based on costs that would be incurred by an independent, third-party in order to ensure that the full costs of corrective action will be covered in the event an owner or operator is not able to fulfill its obligations. EPA's 1986 proposed rule for financial assurance for corrective action contains some discussion of some of the elements that may be relevant to a cost estimate. [20] Often, however, regulators will need to rely on the institutional knowledge that exists in their Region or State to estimate the costs of some of these activities when actual costs are not known.

The language of the permit or administrative order should be crafted carefully to ensure that the financial assurance requirements are clearly set forth and that the amount necessary for the particular facility is established and maintained. Regulators may also consider including a provision in an order providing that if the facility owner or operator fails to establish and maintain the financial assurance as required, the facility owner or operator may be subject to enforcement action, including civil penalties. In addition, clear definitions of operative terms, such as "failure to fulfill corrective action obligations" will help insure compliance.

3.2 Mechanisms

Since EPA has not promulgated specific regulations for financial assurance for corrective action, regulators have the flexibility to determine which mechanism an owner or operator may use to satisfy the financial assurance requirements. Often regulators look to other regulatory provisions pertaining to financial assurance for guidance such as the regulations for closure and post-closure care and third-party liability at TSDFs at 40 CFR Part 264, Subpart H. These provisions allow owners and operators of TSDFs to demonstrate financial responsibility through a trust fund,

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[20] Advance Notice of Proposed Rulemaking, 51 Fed Reg, 37854, at 37862 (Oct. 24, 1986) (hereinafter "the 1986 ANPR").

Exhibit G

surety bond, a letter of credit, insurance, corporate guarantee, or qualification as a self-insurer by means of a financial test. Any one, or any combination of these mechanisms may be used if appropriate, to satisfy the financial assurance requirements for corrective action given the specific circumstances. EPA may allow other mechanisms to provide financial assurance for corrective action as well, if the facility owner or operator demonstrates to the satisfaction of the Agency that such mechanisms provide an acceptable level of financial assurance, and the mechanisms are otherwise consistent with federal law. [21] States may use these or other financial assurance mechanisms, provided they are permissible under their own laws and provide adequate levels of assurance. Each mechanism has unique characteristics so regulators should carefully evaluate the advantages and disadvantages of each when determining which should be used.

Regulators may also look to the regulations for municipal solid waste landfill facilities at 40 CFR Part 258.74, Subpart H, and the regulations for underground storage tanks at 40 CFR Part 280.90, Subpart G for guidance as well. [22]

EPA urges regulators to exercise caution in drafting the actual language of the mechanism to be used for a specific facility. For example, regulators should not necessarily rely on the exact language in the regulations because that language does not relate specifically to corrective action. The language of the mechanism or instrument for financial assurance should be drafted for the specific purpose of providing financial assurance for corrective action at the specific facility being addressed in order to ensure its availability in the event that the owner or operator fails to fulfill its obligations.

The permit or administrative order can be drafted to include provisions to help ensure the adequacy of the financial assurance mechanism. For example, the document could be drafted to include the specific mechanism the facility owner or operator must provide or a specific range of options that would be acceptable to the regulating agency. For administrative orders, the selected mechanism would require approval by the regulating agency. In addition, the administrative order could set forth consequences in the event the owner or operator fails to establish and maintain the financial assurance as required.

Use of each mechanism implicates a specialized area of law and finance. Regulators should work with experts in those fields in reviewing the mechanisms proposed prior to approval to ensure sufficiency. Once a mechanism is selected, there are various techniques to ensure the mechanism remains effective. In the regulations mentioned above, for example, mechanisms such as the financial test are monitored to ensure the company continues to meet both the financial and the record keeping and reporting requirements. Monitoring of third-party mechanisms, such as surety

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[21] Proposed Rule, Allowable Mechanisms, 55 Fed. Reg. 30799, at 30856 (July 27, 1990).

[22] The financial assurance regulations referenced above are available electronically at www.epa.gov/epahome/cfr40 (Title 40, Chapter I, Subchapter I Solid Wastes (Parts 239-299), Part 264 p.64; Parts 258.74 p.47; Parts 280.90 p.36).

bonds also ensures the surety remains financially viable. This can be done, for example, by confirming that the surety continues to be included in the U.S. Treasury's Circular 570. Monitoring by regulators can be facilitated by, for example, imposing regular reporting requirements on the owner or operator.

As important as regular monitoring are requirements for reporting any termination or cancellation of the financial assurance instrument. The regulatory authority could require notice of the intent to cancel, terminate or fail to renew an instrument. This notice could provide sufficient time for the owner or operator to obtain a replacement or, if one is not available, allow the regulator enough time to call in the instrument and ensure that funds will be available for the work. In addition, when a corporate guarantee is used, the corporate guarantor could be required to provide immediate notice whenever it no longer meets the financial test. When this occurs, the facility owner or operator could be required to provide an alternative financial assurance mechanism. The financial assurance regulations referenced above provide examples of how this can be structured.

In sum, regulators have considerable discretion in determining how to address financial assurance requirements that are protective of human health and the environment. The Agency suggests using the approach that is best suited to the particular facility being addressed. Practical cleanup requirements should be developed that enhance timely, efficient and protective cleanups based on facility-specific circumstances.

Section 4: Responding to Facilities that Claim an Inability to Provide Financial Assurance for Corrective Action

4.1 Evaluating the Financial Health of a Facility Where the Owner/Operator Claims a Limited Ability to Provide Sufficient Financial Assurance

Where financial assurance for corrective action has not yet been provided by the owner or operator of a TSDF, an owner or operator could claim, at the time the financial assurance must be provided, that it cannot afford the required financial assurance or claim that no one is willing to provide it for them. Where corrective action cannot be completed prior to issuance of the permit RCRA and current federal regulations explicitly mandate permits issued to owners and operators of TSDFs must contain schedules of compliance for corrective action and assurances of financial responsibility for completing such corrective action.[23] Likewise, owners and operators of facilities subject to RCRA 3008(h) administrative orders are typically required to provide financial assurance. In cases where the facility owner or operator claims it is unable to afford the required financial assurance, EPA recommends that regulators evaluate the financial health of the owner or operator to determine whether the claim is valid. Regulators should obtain the expertise of a financial analyst when making this determination.

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[23] RCRA § 3004(u), 40 CFR § 6924(u); 40 CFR § 264.101.

Exhibit G

A good starting point for reviewing the financial condition of an owner or operator would be the individual or company's financial statements and tax returns. Generally, reviewing a company's records from the last five years will be sufficient. The facility owner or operator should not have any difficulty voluntarily providing such information to document a legitimate claim.

Regulators should keep in mind that the value of an entity's financial statements and tax returns is limited because these documents generally reflect past financial performance from which future performance may only be predicted. They do not provide certainty about an owner or operator's future financial situation.

Regulators should also keep in mind that an owner or operator that submits financial information generally will have the expectation that such information will be retained as confidential and not released to the public. EPA has specific procedures that must be followed in the event that an entity that submits financial information claims that the information is confidential. [24] Each State regulator is encouraged to review his or her State's rules regarding such information.

Besides financial information provided by the owner or operator, regulators may also find useful information from other sources, such as Dun & Bradstreet (D&B), the Securities and Exchange Commission (SEC), and LEXIS-NEXIS. In addition, both Moody's and Standard & Poor's provide bond ratings. These services may have information that may be helpful in predicting a company's future performance, and therefore, its ability to provide financial assurance.

D&B can provide a broad range of information such as bankruptcy filings, suits and liens, and credit opinions. Regulators can use D&B to identify and group entities within an organization, and link parents with subsidiaries. D&B also provides business deterioration and high risk alerts.

Private services, such as D&B, provide useful reference tools, but the costs of collecting and analyzing the data from these services can be high, so regulators may not have access to them. Access to EDGAR, SEC's online database is publicly available at no cost. EDGAR is available at www.sec.gov/index/htm. However, the SEC only has financial information on publicly traded companies, with assets of $10 million or higher. It is important to note that previous analysis by EPA found significantly higher bankruptcy rates for owners and operators that have a net worth less than $10 million. [25]

If the regulator determines that the owner or operator's claim is valid, the regulator must decide the best course of action to try to bring the owner or operator into compliance with financial assurance requirements during the period leading up to final remedy selection. If the facility owner or operator concerned demonstrates that it is working toward complying with the requirements, and that there is a reasonable prospect of providing financial assurance in the near

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[24] 40 CFR Part 2.208, Subpart B.

[25] Notice of Proposed Rulemaking, 59 Fed. Reg. 51523, at 51527 (Oct. 12, 1994).

Exhibit G

future, the regulator may consider requiring the owner or operator to provide the financial assurance in accordance with a schedule, while also performing the necessary corrective action. The compliance schedule should clearly set forth, in detail, what the owner or operator must do, when the owner or operator must do it, and the milestones and reporting requirements. In addition, the compliance schedule should require the owner or operator to submit updates on its financial situation. For interim status facilities, regulators should consider including such terms in an administrative order. For permitted facilities, the regulators may need to modify the permit to accomplish the same result.

If the regulator determines that the facility owner or operator's claim is not valid, a variety of options are available to the regulator to ensure that the owner or operator complies with the financial assurance requirements. For example, depending upon the circumstance the regulator could issue an administrative order requiring compliance with RCRA financial assurance requirements and/or seek penalties for noncompliance, or file an action for injunctive relief in court.

4.2 Environmental Claims in Bankruptcy Filings

When the owner or operator of a facility subject to RCRA corrective action requirements files for bankruptcy, financial assurance issues become further complicated. While bankruptcy law is generally favorable to the government in enforcing corrective action and financial assurance requirements against debtors, there are often other considerations that should be evaluated pragmatically.

Typically, a financially distressed business will continue to operate and will file a Chapter 11 bankruptcy case, which provides an opportunity for the company to restructure its debts. If the company cannot solve its financial problems, it may seek to liquidate by filing a Chapter 7 bankruptcy case or by having its Chapter 11 case converted to Chapter 7 liquidation. Issues relating to financial assurance vary depending upon whether the bankruptcy case is a Chapter 11 or Chapter 7 case.

In a Chapter 11 bankruptcy case, the debtor usually remains in possession and control of its property and continues to operate its business while seeking a solution to its financial problems. A Chapter 11 debtor is not excused from its obligation to comply with environmental laws and regulations in the operation of its business, including financial assurance requirements.[26] The regulating agency may take appropriate enforcement action to compel compliance or to assess a

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[26] In Safety-Kleen, Inc. (Pinewood) v. Wyche, 274 F.3d 846 (4th Cir. 2001), the court held that in a Chapter 11 case a state administrative order requiring compliance with RCRA financial assurance requirements remains in effect, notwithstanding the filing of a Chapter 11 petition by the debtor because the primary purpose of financial assurance requirements is to deter environmental misconduct.

civil penalty.[27] Environmental enforcement actions brought by the government against companies in bankruptcy are generally excepted from the bankruptcy automatic stay pursuant to the "police power" exemption in 11 U.S.C. §362 (b)(4).

The regulating agency's response to a Chapter 11 bankruptcy may differ depending on the situation. For example, if the facility owner or operator has established and is maintaining adequate financial assurance at the time that it declares bankruptcy, then the regulating agency could act to secure that financial assurance by whatever means is appropriate given the particular financial assurance mechanism. It is possible that, upon notice of bankruptcy, the issuer may attempt to terminate an instrument established for financial assurance. In such a case, the regulating agency will have to act swiftly to decide whether to make a demand for payment to secure the funds before the termination of the specific financial assurance instrument occurs. Such demand for payment would typically direct payment of the secured amount into an already established standby trust, where the funds would be available to finance the ongoing corrective action work. This approach works best where the mechanism for demanding such payment is specified in the language of the specific instrument that established the financial assurance. Ultimately, the party responsible for payment on the financial assurance will be forced to bring a claim in the bankruptcy proceeding against the debtor for any payment required by the regulating agency under a financial assurance mechanism established prior to the filing of bankruptcy (such claims are considered "contingent claims" and are subject to bankruptcy).

Where the facility owner or operator has not established financial assurance or an appropriate amount of financial assurance for corrective action, it is important for the regulating agency to assert itself in the bankruptcy proceeding to ensure that the resources of the owner or operator are available to address the necessary corrective action. Facilities that file for Chapter 11 bankruptcy protection and plan to emerge from bankruptcy as an operating TSDF could be required as part of the bankruptcy process, to establish and maintain financial assurance for corrective action. Regulating agencies need to be involved in the bankruptcy proceeding to ensure that this is the case. Where an owner or operator that has declared Chapter 11 bankruptcy does not intend to continue operating as a TSDF and will, therefore, no longer receive hazardous waste, the regulating agency should endeavor to ensure that sufficient resources are made available to complete the necessary corrective action at the facility.

Regulators should also be aware that some bankruptcy courts allow Chapter 11 liquidations where the debtor remains in possession, no trustee is appointed, and the debtor proposes and the creditors vote on and approve a plan of liquidation. Abandonment of contaminated property may occur in such Chapter 11 liquidations.

In a Chapter 7 bankruptcy case, the debtor ceases operations and its business is liquidated. A Chapter 7 trustee is appointed who sells the assets of the debtor and distributes any proceeds to

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[27] Once a penalty is assessed or a judgment on the penalty is obtained, the automatic stay prohibits collection activities other than through the bankruptcy process.

creditors in accordance with the priority scheme set forth in the Bankruptcy Code. The Chapter 7 trustee may seek to abandon contaminated property that cannot be sold. While the debtor's obligations for cleaning up the contaminated property are not discharged by the bankruptcy, the debtor rarely has the resources to perform such work. More often than not, the financial assurance previously established by the debtor may be the only significant source of funding for corrective action.

Issues that arise when a regulated entity files for bankruptcy are complex. In some instances the law is unsettled or may vary depending upon the jurisdiction. Regulators must consult with legal counsel when cases involving bankruptcy arise in order to ensure that their regulating agency's rights are preserved.

Section 5: Conclusion

RCRA requires permits issued to owners and operators of hazardous waste TSDFs to provide assurances of financial responsibility for completing corrective action as may be necessary to protect human health and the environment. In addition, financial assurance requirements should generally be included in corrective action administrative orders issued under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). Regulators have flexibility to tailor financial responsibility requirements to facility-specific circumstances. EPA recommends structuring the governing document, either permit or administrative order to ensure that facility owners and operators obtain an appropriate mechanism to satisfy the financial responsibility requirements for corrective action. The mechanism should ensure that sufficient funds are available to undertake the necessary corrective action at the facility in the event the facility owner or operator is unable or fails to so do. Failure of a facility owner or operator to comply with financial responsibility requirements may put human health and the environment at risk.

Section 6: Use and Purpose of this Document

This document is not a regulation nor does it change or substitute for the statutory provisions described in this document. Moreover, this document does not confer legal rights or impose legal obligations upon any member of the public.

While EPA has made every effort to ensure the accuracy of the discussion in this document, the obligations of the regulated community are determined by statutes, regulations, or other legally binding requirements. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling. Because this document cannot impose legally-binding requirements EPA and State decision-makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate.

The general description provided here may not apply to a particular situation based upon the circumstances. Interested parties are free to raise questions and objections about the substance of this document and the appropriateness of the application of this document to a particular situation. EPA and other decision-makers retain the discretion to adopt approaches on a case-by-case basis

Exhibit G

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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http://www.epa.gov/region8

Ref: 8ENF-RC

August 9, 2007

RCVD 8/15/2007
CC: T. Olavich, fax
S. Janoe
B. Miller
B. Cox

Mr. Jon Nickel
ASARCO East Helena Plant
100 Smelter Road
P.O. Box 1230
East Helena, MT 59635

RE: ASARCO East Helena Smelter Corrective Action Management Unit (CAMU) Phase 2 Cell, Financial Assurance

Dear Mr. Nickel:

The purpose of my letter is to formally approve the proposed financial instrument and the amount of financial assurance to be provided by ASARCO for the construction of the corrective action management unit (CAMU) phase 2 cell. The cost estimates and methodology behind those estimates were carefully evaluated by EPA's project manager, Linda Jacobson. EPA's understanding is that the costs provided in the spreadsheet on June 28, reflect actual costs for contracted services between ASARCO and URS. We also understand that ASARCO has obtained the bankruptcy court's agreement as to these cost expenditures. In keeping with the intent behind financial assurance mechanisms i.e. the funding has to be sufficient so that if ASARCO fails to complete the CAMU, EPA can take over and complete the work, EPA requires the amount of financial assurance to be increased by ten percent. EPA believes that further discussion is needed to adequately address future O&M costs, the provision for which we agree to hold in abeyance.

A draft trust agreement provided to us by J. Barton Seitz on July 27, was reviewed by our financial analyst, Daniela Golden, and our attorney, Chuck Figur. The trust agreement as presented is hereby approved for submittal.

On August 1, a letter was sent to you with EPA's final comments and approval for the CAMU work plan. We look forward to receiving an executed trust agreement and the start of construction on the CAMU. If you should have questions on this or any related matter, please contact me at (303) 312-6352.

Sincerely,

Sharon L. Kercher

Sharon L. Kercher, Director
Technical Enforcement Program

Exhibit I

bcc: Linda Jacobson
Daniela Golden
Charles Figur, ENF-L
Mark Hall, MDEQ
Denise Kirkpatrick, MDEQ

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
v.	:	Civil No. CV 98-3-H-CCL
ASARCO INCORPORATED,	:	
	:	
Defendant.	:	

UNOPPOSED MOTION TO REOPEN CASE FOR PURPOSES OF SUBSTITUTING PARTIES AND MODIFYING THE CONSENT DECREE

Plaintiff the United States of America and Defendant Asarco LLC (formerly known as "ASARCO Incorporated") ("ASARCO")[1], hereby move the Court to reopen this case for the purpose of substituting the Montana Environmental Trust Group, LLC, solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (the "Custodial Trust") and not individually (hereafter, "METG" or "Trustee of the Custodial Trust"), for ASARCO and modifying the Consent Decree entered in this case in 1998 (the "1998 Decree").

The "Consent Decree and Settlement Agreement Regarding the Montana Sites" (the "Montana Sites Agreement") filed in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), *In re: ASARCO, LLC, et al.*, Case No. 05-21207 (Chapter 11 Jointly Administered) on March 13, 2009, establishes the Custodial Trust for property owned by ASARCO in Montana, including the property in East Helena affected by the 1998 Decree. It also establishes a Custodial Account for payment of claims, including claims for work to be performed under the 1998 Decree.[2] Recently, the District Court for the

[1] ASARCO Incorporated changed its name to ASARCO LLC in 2005. All references to "ASARCO" refer to ASARCO Incorporated, ASARCO LLC, or both, as appropriate.

[2] *See* Montana Sites Agreement (attached hereto as Exhibit 1), ¶¶ 5.c and 6.b(vii), at 15 and 18.

Southern District of Texas appointed METG, not individually but solely in its representative capacity as Trustee of the Custodial Trust, "as the Custodial Trustee to administer the Custodial Trust and the Custodial Trust Accounts for the Montana Custodial Trust," Case No. 09-CV-177 (S.D. Tex November 13, 2009).[3] The United States and ASARCO LLC (the "Parties"), with METG, now seek an Order substituting METG, as Trustee of the Custodial Trust (and not individually), for ASARCO in this case and on the 1998 Decree.[4]

Background

The 1998 Decree

On April 6, 1998, this Court entered the 1998 Decree in this case. The Decree resolves certain environmental causes of action alleged by the United States against ASARCO, in connection with ASARCO's smelter facility in East Helena, Montana (the "East Helena Facility"). The United States' environmental causes of action were brought pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 to 6992k ("RCRA"), and the Federal Clean Water Act, 33 U.S.C. §§ 1251 to 1387 ("CWA"), for injunctive relief and civil penalties. The 1998 Decree settled these causes of action and

[3] Memorandum Opinion, Order of Confirmation, and Injunction (excerpted and attached hereto as Exhibit 2) at 78-79.

[4] *See* Montana Sites Agreement, ¶ 19, at 45.

required that ASARCO implement compliance measures, corrective action, and a supplemental environmental project at ASARCO's East Helena Facility. ASARCO performed obligations under the 1998 Decree until December 9, 2009, when a bankruptcy reorganization plan for ASARCO became effective. Pursuant to the terms of the Montana Sites Agreement, ASARCO is no longer liable for any tasks remaining under the 1998 Decree. Further performance of the 1998 Decree obligations depends upon substituting the Custodial Trustee for ASARCO, as agreed in the Montana Sites Agreement.

The Bankruptcy

On August 9, 2005, ASARCO filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101 to 1174, in the Bankruptcy Court. Subsequently, various subsidiaries of ASARCO also filed voluntary petitions for relief in the Bankruptcy Court and the cases were consolidated for joint administration under Case No. 05-21207 (the "Reorganization Cases"). The United States filed proofs of claim in the Reorganization Cases alleging, among other things, that ASARCO was responsible for ongoing compliance with the 1998 Decree. The Parties, with the State of Montana, entered into the Montana Sites Agreement (attached hereto as Exhibit 1) to resolve certain claims and causes of action in the Reorganization Cases relating to ASARCO's Montana properties and

operations at those properties, including the East Helena Facility.[5] The Montana Sites Agreement was entered by the Bankruptcy Court and became part of the Reorganization Plan approved by the District Court on November 13, 2009 and as modified on December 3, 2009. The Reorganization Plan became effective on December 9, 2009.

The Montana Sites Agreement

The Montana Sites Agreement establishes a Custodial Trust with a total cash payment of up to $138,300,000[6] and title to ASARCO's Montana properties, including the East Helena Designated Property.[7] The Custodial Trust will be available to carry out the administrative and property management functions related to these properties, including the East Helena Facility, and for managing and funding implementation of future investigation and clean up activities with respect to these properties, including the East Helena Facility. METG has agreed to serve as the Trustee of the Custodial Trust. With this Court's permission, it shall assume ASARCO's continuing obligations under the 1998 Decree solely to the full extent of the resources available in the Custodial Trust Cleanup Account for the East Helena Designated Property and realty resources comprising the East Helena

[5] The East Helena Facility is included in the East Helena Designated Property, as defined in the Montana Sites Agreement, ¶1.d, at 9.

[6] *Id.* ¶¶ 6.b(vii) and 6.c, at 16-18.

[7] *See, id.* ¶ 5.c, at 15.

Designated Property.[8] ASARCO is no longer be liable for any tasks remaining under the 1998 Decree.

The Parties, with the State of Montana, agreed that the Trustee of the Custodial Trust shall be substituted for ASARCO, as Defendant in this case (for the benefit of the United States and the State of Montana) and under the terms of the 1998 Decree as provided in the Montana Sites Agreement.[9] The plan of reorganization in the Reorganization Cases became effective on December 9, 2009; title has been transferred to the Custodial Trust; and full payment has been received by the Trust. Under the terms of the Montana Sites Agreement, therefore, it is now appropriate for this Court to substitute the Trustee of the Custodial Trust for ASARCO in the 1998 Decree.

The Substitution of Parties Is Necessary to Fulfill the Purposes of the 1998 Decree

The Parties seek to substitute the Trustee of the Custodial Trust for

[8] *See id.* ¶¶ 5.c and 6.b(vii), at 15 and 18.

[9] *See id.* ¶¶ 5, 6, and 19, at 10–31, 45-46. Plaintiff and the Trustee of the Custodial Trust have agreed to modify the 1998 Decree subsequent to this Joint Motion to reflect the deletion of certain requirements in the 1998 Decree, in particular: the materials management requirements (Part VI); the supplemental environmental project (Part VIII); the environmental management and protection requirements (Part X); penalty (Part XII); stipulated penalties (Part XII); force majeure (Part XV); dispute resolution (Part XVI); costs of suit (Part XIX), and other specific requirements related thereto, such as reporting, and the modification of certain other provisions and requirements of the 1998 Decree to conform the 1998 Decree to the Montana Sites Agreement.

ASARCO to comply with the Montana Sites Agreement, entered in the bankruptcy proceeding, and to complete the work under the 1998 Decree, entered by this Court. Pursuant to Federal Rule of Civil Procedure Rule 25(c), the Parties respectfully request that this Court enter an order providing that:

1. The Trustee of the Custodial Trust shall be substituted for ASARCO, as Defendant for the benefit of the United States and the State of Montana, in this case.

2. ASARCO is no longer liable for any tasks remaining under the 1998 Decree.

3. The Trustee of the Custodial Trust shall perform the continuing obligations under the 1998 Decree concerning the East Helena Facility consistent with the Montana Sites Agreement.

4. The Trustee of the Custodial Trust's obligations are limited solely to the available cash set aside under the Montana Sites Agreement for the East Helena Designated Property Custodial Trust Cleanup Account and realty resources comprising the East Helena Designated Property.

Conclusion

For all of the reasons stated above, the Parties and the Trustee of the Custodial Trust respectfully request that this Court: reopen this case, substitute the Trustee of the Custodial Trust for ASARCO in this case and on the 1998 Decree, and keep the case open for a joint submission by the Plaintiff and the Trustee of the

Custodial Trust of a modified consent decree to reflect the continuing obligations of the Trustee of the Custodial Trust consistent with the Montana Sites Agreement. The proposed Order is attached.

Respectfully submitted,

FOR THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE

JOHN C. CRUDEN
Deputy Assistant Attorney General
Environment and Natural Resources Division

/s/ Elliot M. Rockler
Attorney for Plaintiff, United States of America

Of Counsel:
CHARLES L. FIGUR
Senior Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
EPA Region VIII
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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2009 the foregoing UNOPPOSED MOTION TO REOPEN CASE FOR PURPOSES OF SUBSTITUTING PARTIES AND MODIFYING THE CONSENT DECREE and proposed Order were electronically served upon the following:

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s/ Elliot M. Rockler
Counsel for the United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ASARCO INCORPORATED, Defendant.	Civil No. CV 98-3-H-CCL

ORDER REOPENING CASE FOR PURPOSES OF SUBSTITUTING PARTIES AND MODIFYING THE CONSENT DECREE

Upon consideration of the Unopposed Motion to Reopen Case for Purposes of Substituting Parties and Modifying the Consent Decree, and good cause appearing,

IT IS HEREBY ORDERED that this case is reopened for the purposes of :

1) substituting the Montana Environmental Trust Group, LLC, solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust (the "Custodial Trust") and not individually, for defendant ASARCO; and

2) modifying the Consent Decree entered in this case in 1998 (the "1998 Decree").

IT IS FURTHER ORDERED that the Consent Decree entered April 6, 1998 in this case is amended as of the Effective Date of the Montana Sites Agreement to:

1) Substitute the Montana Environmental Trust Group, LLC, not individually but solely in its representative capacity as Trustee of the Montana Environmental Custodial Trust for the benefit of the United States and the State of Montana, for ASARCO in the 1998 Decree, subject to the terms of the Montana Sites Agreement;

2) The Trustee of the Custodial Trust's obligations are limited solely to the available cash set aside under the Montana Sites Agreement for the East Helena Designated Property Custodial Trust Cleanup Account and realty resources comprising the East Helena Designated Property; and

3) Remove Asarco Incorporated and ASARCO LLC as parties to the 1998 Decree, under which ASARCO Incorporated and ASARCO LLC will no longer be liable.

Dated: _____, 2009

_____
CHARLES C. LOVELL
United States District Court Judge

APPEAL, ARCHIVE, CLOSED, REOPEN

U.S. District Court
District Of Montana (Helena)
CIVIL DOCKET FOR CASE #: 6:98-cv-00003-CCL

United States v. ASARCO, Inc.
Assigned to: Judge Charles C. Lovell
Demand: $9,999,000
Case in other court: 9th Circiut, 10-35824
Cause: 42:6901 Environmental Cleanup Expenses

Date Filed: 01/23/1998
Date Terminated: 08/10/2010
Jury Demand: None
Nature of Suit: 893 Environmental Matters
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States

represented by **Elliot Morris Rockler**
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Michael Goodstein
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TERMINATED: 05/25/2010

V.

Defendant

ASARCO

represented by **Gregory Evans**
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Date Filed	#	Docket Text
01/23/1998	1	COMPLAINT (TLO) (Entered: 01/27/1998)
01/23/1998		PROPOSED Consent Decree submitted by plaintiff (TLO) (Entered: 01/27/1998)
04/17/1998	2	MOTION by plaintiff United States for court to enter consent decree w/c/s (TLO) (Entered: 04/24/1998)
04/17/1998	3	MEMORANDUM by plaintiff in support of motion for court to enter consent decree [2-1] w/c/s (TLO) (Entered: 04/24/1998)
05/06/1998	4	CONSENT signed by Judge Lovell - J/O Book, Vol 23, Page 731 (cc: Gallinger, Goodstein, Moscado, Kellner for ASARCO) (DMZ) (Entered: 05/07/1998)
10/31/2007		ARCHIVE CASE INFORMATION FROM FRC DENVER, CO, 1 volumes, 1 of 40 Box Number, 021 07 0109 FRC Accession Number, location 387249 thru 387288 (ded,) Modified on 2/24/2010 to add location numbers (DED,). (Entered: 01/03/2008)
12/18/2009	5	Unopposed MOTION to Amend/Correct *Consent Decree*, Unopposed MOTION to Reopen Case Elliot Morris Rockler appearing for Plaintiff United States (Attachments: # 1 Text of Proposed Order, # 2 Exhibit 1, # 3 Exhibit 2) (Rockler, Elliot) (Entered: 12/18/2009)
01/08/2010	6	ORDER REOPENING CASE FOR THE PURPOSES OF SUBSTITUTING PARTIES AND MODIFYING THE CONSENT DECREE. Signed by Judge Charles C. Lovell on 1/8/2010. (HEG,) (Entered: 01/08/2010)
02/26/2010	7	NOTICE of Appearance by Kenneth K Lay on behalf of ASARCO (Lay, Kenneth) (Entered: 02/26/2010)
03/05/2010	8	MOTION Gregory Evans to Appear Pro Hac Vice (Filing fee $ 250 receipt number 0977-700383.) Kenneth K Lay appearing for Defendant ASARCO (Attachments: # 1 Affidavit of Gregory Evans, # 2 Text of Proposed Order) (Lay, Kenneth) (Entered: 03/05/2010)
03/05/2010	9	MOTION to Terminate East Helena CAMU Trust Kenneth K Lay appearing for Defendant ASARCO (Lay, Kenneth) (Entered: 03/05/2010)
03/05/2010	10	Brief/Memorandum in Support re 9 MOTION to Terminate East Helena CAMU Trust filed by ASARCO. (Attachments: # 1 Affidavit of Gregory Evans, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J) (Lay, Kenneth) (Entered: 03/05/2010)
03/18/2010	11	Unopposed MOTION for Extension of Time to File Response/Reply as to 10 Brief/Memorandum in Support, *ASARCO Motion to Terminate East Helena CAMU Trust* Elliot Morris Rockler appearing for Plaintiff United States (Attachments: # 1 Text of Proposed Order) (Rockler, Elliot) (Entered: 03/18/2010)
03/19/2010	12	Amended MOTION for Extension of Time to File Response/Reply as to 10 Brief/Memorandum in Support, 11 Unopposed MOTION for Extension

		of Time to File Response/Reply as to 10 Brief/Memorandum in Support, *ASARCO Motion to Terminate East Helena CAMU Trust*Unopposed MOTION for Extension of Time to File Response/Reply as to 10 Brief/Memorandum in Support, *ASARCO Motion to Terminate East Helena CAMU Trust* Elliot Morris Rockler appearing for Plaintiff United States (Rockler, Elliot) (Entered: 03/19/2010)
03/22/2010	13	ORDER granting 11 and 12 Motions for Extension of Time to File Response as to 10 ASARCO'S CAMU Trust Motion. New response deadline up to/including 5/17/2010. ASARCO reply deadine 14 days after Response filed. Signed by Judge Charles C. Lovell on 3/22/2010. (MKB) (Entered: 03/22/2010)
03/23/2010	14	ORDER granting 8 Motion to Appear Pro Hac Vice for Attorney Gregory Evans for ASARCO. Copy of Order and Notice mailed to Mr. Evans.. Signed by Judge Charles C. Lovell on 3/23/2010. (DED,) (Entered: 03/23/2010)
03/23/2010	15	MOTION to Withdraw as Attorney *by John N. Moscato* Elliot Morris Rockler appearing for Plaintiff United States (Attachments: # 1 Text of Proposed Order Withdrawal of John N. Moscato) (Rockler, Elliot) (Entered: 03/23/2010)
03/31/2010	16	ORDER granting 15 Motion to Withdraw as Attorney. Attorney John N. Moscato terminated. Signed by Judge Charles C. Lovell on 3/31/2010. (MKB) (Entered: 03/31/2010)
04/14/2010	17	ORDER AMENDING caption only of 14 Order on Motion to Appear Pro Hac Vice (granting 8 motion Gregory Evans to Appear Pro Hac Vice filed by ASARCO). Signed by Judge Charles C. Lovell on 4/14/2010. (MKB) Modified on 4/14/2010 to reflect copy of Amended Order mailed to Schiffer and Goodstein (HEG,). (Entered: 04/14/2010)
05/17/2010	18	RESPONSE to Motion re 9 MOTION to Terminate East Helena CAMU Trust *and In Support of the United States' Cross Motion for Summary Judgment or, in the alternative, to Dismiss for Failure to Join a Necessary Party or, in the alternative, to Stay* filed by United States. (Attachments: # 1 Affidavit Declaration of Linda Jacobson) (Rockler, Elliot) (Entered: 05/17/2010)
05/17/2010	20	MOTION for Summary Judgment *or, in the alternative, to Dismiss for Failure to Join a Necessary Party or, in the alternative, to Stay* Elliot Morris Rockler appearing for Plaintiff United States (Rockler, Elliot) (Entered: 05/17/2010)
05/17/2010	21	Statement of Undisputed Fact re: 20 MOTION for Summary Judgment *or, in the alternative, to Dismiss for Failure to Join a Necessary Party or, in the alternative, to Stay*. (Rockler, Elliot) (Entered: 05/17/2010)
05/21/2010	22	MOTION to Withdraw as Attorney *Louis J. Schiffer and Michael Goodstein* Elliot Morris Rockler appearing for Plaintiff United States (Attachments: # 1 Affidavit Declaration of Elliot M. Rockler, # 2 Text of Proposed Order) (Rockler, Elliot) (Entered: 05/21/2010)
05/25/2010	23	ORDER granting 22 Motion to Withdraw as Attorney. Attorney Michael Goodstein and Lois J. Schiffer terminated. Signed by Judge Charles C.

		Lovell on 5/25/2010. (MKB) (Entered: 05/25/2010)
06/07/2010	24	RESPONSE to Motion re 9 MOTION to Terminate East Helena CAMU Trust, 20 MOTION for Summary Judgment *or, in the alternative, to Dismiss for Failure to Join a Necessary Party or, in the alternative, to Stay and,* REPLY to Response to Motion *to Terminate East Helena CAMU Trust* filed by ASARCO. (Lay, Kenneth) (Entered: 06/07/2010)
06/07/2010	25	Statement of Genuine Issues re: 20 MOTION for Summary Judgment *or, in the alternative, to Dismiss for Failure to Join a Necessary Party or, in the alternative, to Stay* filed by ASARCO. (Lay, Kenneth) (Entered: 06/07/2010)
06/21/2010	26	REPLY to Response to Motion re 20 MOTION for Summary Judgment *or, in the alternative, to Dismiss for Failure to Join a Necessary Party or, in the alternative, to Stay* filed by United States. (Rockler, Elliot) (Entered: 06/21/2010)
07/21/2010	27	NOTICE of Change of Address by Kenneth K Lay (Lay, Kenneth) (Entered: 07/21/2010)
08/10/2010	28	ORDER denying 9 ASARCO's Motion to terminate CAMU Trust; partially granting [19/20] USA's Motion for Summary Judgment (E.H.CAMU Trust purposes not fulfilled and E.H.CAMU Trust not terminated). Signed by Judge Charles C. Lovell on 8/10/2010. (MKB) (Entered: 08/10/2010)
08/10/2010	29	CLERK'S JUDGMENT in favor of United States against ASARCO for the purposes of the East Helena CAMU Trust have not been fulfilled and the CAMU Trust has notbeen properly terminated and continues in effect. ASARCOs Motion to terminate the East Helena CAMU Trust (Doc. 9) is DENIED. (HEG,) (Entered: 08/10/2010)
09/16/2010	30	NOTICE OF APPEAL by ASARCO. Filing fee $ 455, receipt number 39663. (Attachments: # 1 Exhibit Representation Statement) (Lay, Kenneth) (Entered: 09/16/2010)
09/17/2010	31	USCA Case Number 10-35824 and Time Scheduling Order for 30 Notice of Appeal filed by ASARCO. (HEG,) (Entered: 09/17/2010)
10/18/2010	32	TRANSCRIPT DESIGNATION ORDER FORM by ASARCO (Evans, Gregory) (Entered: 10/18/2010)

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 811 W. 7th Street, 30th Floor, Los Angeles, California 90017.

On January 11, 2011, I served the foregoing document(s) described as APPELLANT'S EXCERPTS OF RECORD, Volume II, on the interested parties in this action:

X by placing ___ the original X a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

X **(BY MAIL)** Following ordinary business practices at the Los Angeles, California office of Integer Law Corporation, I placed the sealed envelope(s) for collection and mailing with the United States Postal Service on that same day. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, such correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 11, 2011 at Los Angeles, California.

K. GHALAMBOR
Type or Print Name

/s/ K. Ghalambor
Signature

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